

PROJECT AGREEMENT

BETWEEN

KENNECOTT UTAH COPPER CORPORATION

AND

JORDAN VALLEY WATER CONSERVANCY DISTRICT

_____, 2003

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**PROJECT AGREEMENT
BETWEEN
KENNECOTT UTAH COPPER CORPORATION
AND
JORDAN VALLEY WATER CONSERVANCY DISTRICT**

THIS PROJECT AGREEMENT (the “Project Agreement”), dated this __ day of _____, 2003, is made between Kennecott Utah Copper Corporation (“Kennecott”) and Jordan Valley Water Conservancy District (“JVWCD”).

RECITALS

A. Kennecott and JVWCD jointly developed a proposal to construct a groundwater extraction and treatment project with groundwater remedial functions (the “Project”), which, among other purposes, will provide treated, municipal quality water to municipalities in the affected area of the southwestern Jordan Valley (the “Affected Area”) as defined in the Consent Decree dated August 21, 1995 entered in Civil Action No. 86-C-0902G in the United States District Court for the District of Utah and Supporting Document (the “Consent Decree”). The Project is more fully described in the Proposal (defined in Section 1.30 below).

B. The Project provides a number of benefits to the public in the Affected Area and each of the parties. The public benefits because municipalities in the Affected Area will receive a certain quantity of municipal quality water at a discount for a 40-year period. The Project benefits Kennecott because, among other reasons, it will assist Kennecott in satisfying various terms of the Consent Decree, certain CERCLA (defined in Section 1.6 below) requirements and the Kennecott/JVWCD Settlement Agreement (defined in Section 1.17 below). The Project benefits JVWCD because, among other reasons, JVWCD will receive new water production and treatment facilities at a substantial cost savings.

C. The Proposal has been submitted for approval to the State of Utah Trustee (defined in Section 1.37 below). The Proposal also was provided to the Utah State Engineer and the United States Environmental Protection Agency, Region VIII.

D. As part of the funds needed to implement the Project, Kennecott and JVWCD seek to utilize the Trust Fund (defined in Section 1.38 below) set up under the Consent Decree in a manner consistent with the terms of the Consent Decree and to restore the equivalent injured resource as described in the Consent Decree. Contemporaneously with the execution of this Project Agreement, the parties will enter into an agreement with the Trustee that clarifies the use of the Trust Fund, among other things.

E. The parties desire to enter into this Project Agreement to set forth their respective rights and obligations regarding, and to govern their relationship in the further development and construction of, the Project.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

1.1. “1995 dollars” or “October 2002 dollars” means a cost or expenditure that is escalated or extended to a later year than 1995 or 2002 as applicable, by means of the PTIF Rate or the ENR Index from September, 1995 or October, 2002, as applicable.

1.2. “Affected Area” has the meaning set forth in the Consent Decree.

1.3. “Affected Municipalities” means the City of Herriman, Riverton City, the City of South Jordan and the City of West Jordan, which are situated in the Affected Area.

1.4. “Alternative Disposal System” means the facilities for transportation and disposal of concentrates from the Zone A Plant and the Zone B Facilities described in Sections 8.5 and 8.6.

1.5. “Bingham Canyon Plant” means collectively the Zone A Collection Facilities, the Zone A Plant and the Zone A Permeate Facilities.

1.6. “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act 42 U.S.C. § 9601 et seq., as either act may be amended.

1.7. “Complete and Operational” with regard to each of the Zone A Plant, the Zone B Facilities and the Lost Use Facilities means that the operator of the plant or facilities has received an operating permit from the Utah Department of Environmental Quality, Division of Drinking Water under its normal rules and regulations, and that the Trustee has provided notice that the plant is Complete and Operational under the State Agreement.

1.8. “Consent Decree” has the meaning set forth in Recital A above.

1.9. “Environmental Claim” means any and all claims, actions, damages, judgments, fines, penalties, demands, liabilities, costs, expenses (including reasonable attorneys’ and other professional fees), clean-up costs, remediation, removal or other response costs, legal expenses (including reasonable attorneys’ fees), investigation costs (including reasonable fees of consultants, counsel and other experts in connection with environmental investigation or testing), and any other losses, liabilities, obligations, fines, penalties (civil or criminal), damages (including compensatory, punitive and natural resource damages), or payments, sought or claimed by any person, governmental agency or other entity which are based upon the violation or alleged violation of any Environmental Law or the release of any Hazardous Materials.

1.10. “Environmental Laws” means the following statutes and their implementing regulations: the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Resource

Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., CERCLA, the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., and any other federal, state or local statute or regulations dealing with similar matters.

1.11. “ENR Index” means the monthly index to be used for escalating a cost or expenditure as set forth in the Engineering and News Record “20 Cities” construction cost index. If the date for a payment, deposit or other amount to be determined based on the ENR Index occurs on a date other than the first day of a month, the escalation during the month in which the date occurs shall be prorated to the date in question based on the ENR Index for the preceding month.

1.12. “EPA” means the United States Environmental Protection Agency and/or its successors.

1.13. “Escrow Agreement” means that certain Agreement for Wellsite Identification and Purchase between Kennecott and JWCD dated December 20, 2001, together with that certain Escrow Agreement among Kennecott, JWCD and Landmark Title Company dated December 20, 2001.

1.14. “Hazardous Materials” means:

- a. hazardous materials, pollutants, contaminants, dangerous substances, constituents, toxic substances, hazardous or toxic chemicals, hazardous wastes and hazardous substances as those terms are defined in any Environmental Law;
- b. petroleum, including crude oil and fractions thereof;
- c. natural gas, synthetic gas and any mixtures thereof;
- d. asbestos and/or asbestos-containing materials;
- e. PCBs, or PCB-containing materials or fluids;
- f. any other substance, including sewage sludge, with respect to which any federal, state or local agency or other governmental entity may require either an environmental investigation or an environmental remediation; and
- g. any other hazardous or noxious substance, material, pollutant or solid waste that is regulated by, or forms the basis of liability under, any Environmental Law.

1.15. “Jordan Valley Membrane Plant” means the Zone B Facilities and the Lost Use Facilities, collectively.

1.16. “JWCD Zone A Pipeline” means the pipeline described in Section 4.4.

1.17. “Kennecott/JWCD Settlement Agreement” means the Settlement Agreement and Release dated September 21, 1995 between Kennecott and JWCD.

1.18. “Kennecott Reconciliation Payment” means \$4,153,196 (October 2002 dollars at the PTIF Rate).

1.19. “Lost Use Capital Costs” means the costs advanced by Kennecott to JWCD pursuant to Section 9.3.b.

1.20. “Lost Use Facilities” means the water treatment facilities to be used to replace lost concentrate water from the Bingham Canyon Plant and Zone B Facilities as detailed in the Proposal, together with all wells, pipelines and other facilities used to collect feed water for the Lost Use water treatment facilities and a forty percent (40%) interest in the land, building and other shared assets supporting the Lost Use water treatment facilities and the Zone B water treatment facilities and in the pipelines and other facilities used to transport treated water and concentrate from the Lost Use water treatment facilities and the Zone B water treatment facilities.

1.21. “Lost Use Water Rights” means water rights owned by JWCD and designated for use in providing water to the Lost Use Facilities as described in Appendix 1 attached hereto.

1.22. “Municipal Quality Water” means water with chemical concentrations at or below 250 mg/L sulfate and 500 mg/L total dissolved solids for water extracted from the area west of the Welby Canal, or 250 mg/L sulfate and 800 mg/L total dissolved solids for water extracted from the area east of the Welby Canal, and which otherwise meets primary drinking water standards for other contaminants.

1.23. “Operational Period” means the period commencing on the date that the applicable Project Facility is Complete and Operational, and continuing for 40 years thereafter.

1.24. “Pressure Zone C Reservoir” means the JWCD water storage tank located at 6980 West 10200 South in Salt Lake County.

1.25. “Process Enhancement Costs” includes Process Enhancement Construction Costs and Process Enhancement Operating, Maintenance and Replacement Costs.

1.26. “Process Enhancement Construction Costs” means the incremental increase in the capital costs of the Zone A water treatment facilities and the Zone B water treatment facilities that are necessary in order to reduce the total dissolved solids in the treated water from 500 mg/L to 250 mg/L in the case of the Zone A water treatment facilities, and from 800 mg/L to 250 mg/L in the case of the Zone B water treatment facilities.

1.27. “Process Enhancement Operating, Maintenance and Replacement Costs” means the incremental increase in the annual operating, maintenance and replacement costs of the Zone A water treatment facilities and the Zone B water treatment facilities that are necessary in order to reduce the total dissolved solids in the treated water from 500 mg/L to 250 mg/L in the case of the Zone A water treatment facilities, and from 800 mg/L to 250 mg/L in the case of the Zone B water treatment facilities.

1.28. “Project” has the meaning set forth in Recital A above.

1.29. “Project Facilities” means the Zone A Plant, the Zone B Facilities and the Lost Use Facilities.

1.30. “Proposal” means the Kennecott and JMWCD “Proposal to the Utah State NRD Trustee and the USEPA CERCLA Remedial Project Manager for Groundwater Extraction and Treatment Remedial Project in the Southwest Jordan Valley” dated August 7, 2003, which includes any amendments that may be agreed to by the parties in writing from time to time. A copy of the Proposal is attached hereto as Appendix 2.

1.31. “Public Treasurers Investment Fund Rate” or “PTIF Rate” means the monthly rate of return received by the State of Utah Treasurer on State funds invested by the Treasurer. If the date for a payment, deposit or other amount to be determined at the PTIF Rate occurs on a date other than the first day of a month, the escalation during the month in which the date occurs shall be prorated to the date in question based on the PTIF Rate for the preceding month.

1.32. “Reconciliation Date” means a mutually acceptable date within 60 days following the date on which the Zone B Facilities are Complete and Operational or January 31, 2009, whichever is earlier.

1.33. “State Agreement” means the agreement of even date herewith, as may be amended from time to time, among the Trustee, Kennecott and JMWCD which provides for, among other things, the Trustee’s approval of the Project and the use of the Trust Fund in connection with the Project.

1.34. “Tailings Impoundment” means the tailings impoundment existing and operating as of the date of this Project Agreement used in connection with Kennecott’s mining operations located in Salt Lake County between approximately 2100 South and U.S. Interstate 80 and west of 8400 West.

1.35. “Tailings Slurry Pipelines” means the system of pipelines and related facilities existing as of the date of this Project Agreement that are used in Kennecott’s mining operations to deliver mill tailings to the Tailings Impoundment.

1.36. “Treated Water” means water which, at the Zone A Meter Station, (i) has chemical concentrations at or below 250 mg/L sulfate and 250 mg/L total dissolved solids, (ii) which otherwise meets primary drinking water standards for other contaminants, and (iii) is free of objectionable tastes and odors (as determined and administered in accordance with the methodology described in Appendix 3, attached hereto and made a part hereof); provided, however, that if at any time JMWCD is no longer taking water produced from the Bingham Canyon Plant pursuant to the terms of this Project Agreement, the term “Treated Water” as applied to such plant shall have the same meaning as “Municipal Quality Water”.

1.37. “Trustee” means the Executive Director of the Utah State Department of Environmental Quality as the State-appointed Trustee for the State’s natural resources as provided in Section 107 of CERCLA, 42 U.S.C. 9607, and/or its successors.

1.38. “Trust Fund” means the natural resource damage claim trust fund administered by the Trustee under the Consent Decree.

1.39. “Zone A Collection Facilities” means the wells and pipelines used for delivery of feed water to the Zone A Plant as detailed in the Proposal.

1.40. “Zone A Meter Station” means the water meter station described in Section 4.3, including the meter.

1.41. “Zone A Permeate Facilities” means the pipelines and other facilities used to deliver Treated Water from the Zone A Plant to the Zone A Meter Station.

1.42. “Zone A Plant” means the Zone A reverse osmosis water treatment system as detailed in the Proposal.

1.43. “Zone A Pretreatment Facilities” means the facilities, if any, as now existing or hereafter utilized to pre-treat feed water to the Zone A Plant.

1.44. “Zone B Adjustment Factor” means, as of any given date, the cumulative total of all amounts released to JVWCD by Kennecott under Sections 9.2.d, 9.2.e and 9.2.f through the date of the determination, divided by the total amount of Zone B Funds as of the date of the determination.

1.45. “Zone B Avoided Capital Costs” means Zone B avoided capital costs payable under Section 10.1.b.

1.46. “Zone B Facilities” means the Zone B water treatment facilities and all wells, pipelines and other facilities used to collect feed water for the Zone B water treatment facilities, together with a sixty percent (60%) interest in the land, building and other shared assets supporting the Zone B water treatment facilities and the Lost Use water treatment facilities and in the pipelines and other facilities used to transport treated water and concentrates from the Zone B water treatment facilities and the Lost Use water treatment facilities.

1.47. “Zone B Funds” means the total amount of the Zone B Design, Construction and Construction Retainage Funds fixed under Section 9.2.b as of the date of execution of this Project Agreement, plus interest at the PTIF Rate through the date of the determination.

1.48. “Zone B ILC” means the Zone B replacement irrevocable letter of credit described in Section II.A of the State Agreement.

1.49. “Zone B Water Rights” means water rights owned by JVWCD and designated for use in providing water to the Zone B Facilities in Appendix 1 attached hereto.

2. Representations and Warranties; Relationship of the Parties.

2.1. Representations and Warranties. Each party represents and warrants as of the date of this Project Agreement that:

- a. It is a validly existing entity with full capacity to execute, deliver and perform this Project Agreement and all corporate or similar approvals to do so have been obtained;

b. All other approvals necessary for the party to carry out the terms of this Project Agreement have been obtained other than governmental approvals and permits for the Project and the matters described in Section 13.2;

c. This Project Agreement constitutes a valid and binding agreement of the party enforceable against it in accordance with its terms, subject to applicable laws of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and similar laws affecting creditors rights and remedies generally;

d. The execution, delivery and performance of this Project Agreement does not and will not (i) violate the party's articles of incorporation, bylaws or other constating documents, (ii) violate, conflict with, or constitute a default under any statute, rule, regulation, permit, order, judgment, decree or award of any governmental agency or court to which the party is subject, (iii) result in the breach of, or constitute a default under, any material agreement or other material instrument by which the party is bound, or (iv) constitute an event which with notice or lapse of time or both would result in any such violation, breach or default; and

e. With regard to any of its lands and easements being used for the Project, such lands and easements are free of liens, encumbrances and environmental contamination that could interfere with the Project.

2.2. No Partnership. Nothing contained in this Project Agreement shall be deemed to constitute either party as the partner, agent or legal representative of the other, nor to create any fiduciary relationship between them. It is not the intention of the parties to create, nor shall this Project Agreement be construed to create, any commercial or other partnership.

2.3. Authority to Act. Neither party shall have any authority to act for or assume any obligation or responsibility on behalf of the other except as expressly set forth in this Project Agreement.

2.4. No Joint Liability. The rights, duties, obligations and liabilities of the parties shall be several and not joint or collective. Each party shall be responsible only for its obligations as set forth herein and shall be liable only for its share of the costs and expenses as provided herein.

2.5. Other Business Opportunities. Each party shall have the right to independently engage in and receive full benefits from existing or future business activities, whether or not competitive with the Project, without consulting the other. The Project is not intended to interfere with existing operations of the parties.

2.6. Implied Covenants. There are no implied covenants contained in this Project Agreement other than those of good faith and fair dealing.

3. Oversight Committee.

3.1. Establishment. The parties hereby establish an Oversight Committee to assure coordination in the implementation of this Project Agreement. The Oversight Committee shall

be the vehicle by which the parties will consult with one another on issues regarding the Project that may arise so long as this Project Agreement remains in effect. The Oversight Committee shall review in advance of finalization or filing all designs, permits and plans for the implementation of the Project, and shall evaluate construction progress and coordinate on any other aspects of the Project of mutual interest. The Oversight Committee may vote on day-to-day matters that arise which do not materially change the nature of the Project and which do not require either party to make expenditures beyond those already budgeted for as of the date of this Project Agreement or subsequently authorized by a party, it being understood that the decisions of the Oversight Committee shall not otherwise be binding on the parties. The Oversight Committee shall not have authority to modify this Project Agreement; when this Project Agreement states that the parties may otherwise agree to provisions not contained herein, the Oversight Committee may make recommendations regarding such additional provisions or modifications but cannot bind either party to them.

3.2. Members. Each party shall appoint two members to serve on the committee. Each party may appoint one or more alternates to act in the absence of a regular member. Any alternate so acting will be deemed a member. A fifth member of the committee shall be appointed by one of the parties to serve a one-calendar year term as chairman of the committee. The party to appoint the first chairman shall be determined by coin toss. The next chairman shall be selected by the party that lost the coin toss, and subsequent chairmen shall continue to be selected by the parties alternating each calendar year. The chairman shall be a non-voting member of the committee unless his vote is necessary to break any tie vote. Appointments shall be made or changed by notice to the other party. A sixth member shall be a non-voting member appointed by the Trustee.

3.3. Meetings. The Oversight Committee shall hold regular meetings at JMWCD's office or such other location as may be mutually agreed at least quarterly until the Zone A Plant and the Zone B Facilities are Complete and Operational, and annually or at such other interval as may be determined by the Oversight Committee thereafter. The chairman shall send out notices to all members of the committee of all regular meetings. Additionally, either party may call a special meeting upon five (5) business days' notice. In the case of an emergency, reasonable notice of a special meeting shall suffice. Each notice of a meeting shall include an itemized agenda prepared by the party sending the notice, but any matters may be considered with the consent of all parties.

3.4. Minutes. The chairman shall prepare minutes of all meetings and shall distribute copies of such minutes to the parties within 15 business days after the meeting.

3.5. Costs. All costs incurred by the parties in attending the meetings shall be paid by the parties individually.

4. Bingham Canyon Plant.

4.1. Construction of Bingham Canyon Plant. Kennecott shall design, permit and construct the Bingham Canyon Plant, as more fully described in the Proposal. Following construction of the Bingham Canyon Plant, Kennecott shall operate the Zone A Plant and use all reasonable efforts in order to cause the Zone A Plant to become Complete and Operational. At such

time as the Zone A Plant is Complete and Operational, the Operational Period for the Zone A Plant shall begin.

4.2. Zone A Contingencies.

a. If, notwithstanding all reasonable efforts by Kennecott, the Zone A Plant is not Complete and Operational by January 31, 2009, either party may terminate this Project Agreement as to the Zone A Plant prior to January 31, 2010, provided that the Zone A Plant has not become Complete and Operational prior to the date of the notice.

b. In the event of a termination as to the Zone A Plant under this Section 4.2 or a termination as to the Zone A Plant under Section 13.3 or 13.4, all of the parties' rights and obligations with respect to the Zone A Plant shall terminate except as provided in Section 11, but all other terms of this Project Agreement shall remain in full force and effect.

4.3. Zone A Meter Station. JVWCD, at its expense, shall install and own a meter station in the public right-of-way reasonably close to a point 1800 feet west of the northwest corner of Section 16, Township 3 South, Range 2 West, S.L.M., no later than December 31, 2004, or within six months following notice from Kennecott that it intends to commence deliveries, whichever is earlier (the "Zone A Meter Station"). Kennecott shall construct, as part of the Zone A Permeate Facilities, a pipeline to convey Treated Water from the Zone A Plant to the Zone A Meter Station.

4.4. JVWCD Zone A Pipeline. JVWCD shall design, construct and own a pipeline with diameter of at least 12 inches from the Zone A Meter Station to the Pressure Zone C Reservoir no later than December 31, 2004, or within 12 months following notice from Kennecott that it intends to commence deliveries, whichever is earlier (the "JVWCD Zone A Pipeline"). JVWCD, in its discretion, may construct a pipeline size larger than 12 inches in diameter for the JVWCD Zone A Pipeline; provided that Kennecott shall not be required to reimburse JVWCD for the incremental cost of the enlargement. Kennecott shall pay \$316,100 (October 2002 dollars at the PTIF Rate) to JVWCD, upon receipt of a copy of a notice of award of the JVWCD Zone A Pipeline construction contract from JVWCD, as the agreed-upon cost of designing and constructing the pipeline, and JVWCD shall thereafter complete construction of the JVWCD Zone A Pipeline. JVWCD shall operate, maintain and replace the JVWCD Zone A Pipeline and Zone A Meter Station so long as JVWCD is receiving treated water from the Zone A Plant.

4.5. Operation of Plant.

a. If the Zone A Plant has become Complete and Operational, Kennecott shall operate, maintain and replace the Zone A Plant for the Operational Period as necessary so as to produce at least 3500 acre feet/year of Treated Water, determined on a rolling average basis in accordance with Section 4.5b, and, provided that JVWCD is not in breach of any of its material obligations under this Project Agreement relating to the Zone A Plant, Kennecott shall deliver such water to JVWCD at the Zone A Meter Station at a hydraulic gradeline elevation of 5370 feet or higher. JVWCD shall purchase such water at a price equal to the Zone A avoided operating, maintenance and replacement

costs determined and payable under Section 9.1.e, plus Process Enhancement Costs determined and payable under Section 9.1.b, plus the Zone A Avoided Capital Costs determined and payable under Section 9.1.d; provided, however, if the Zone A Plant produces more than 3500 acre feet per year of water (on a rolling average basis) and Kennecott elects to sell such water to JMWCD, the price to be paid for water in excess of such 3500 acre feet/year, and any other terms, shall be subject to negotiation between the parties. At any time during the Operational Period for the Zone A Plant, Kennecott may elect (but shall have no obligation) to transfer the plant to JMWCD upon mutually acceptable terms and conditions. Upon completion of the Operational Period for the Zone A Plant, a continuing relationship may be established between the parties with regard to the Bingham Canyon Plant, subject to mutually acceptable terms and conditions.

b. Notwithstanding anything to the contrary in this Agreement, after the fifth anniversary of the Zone A Completion Date (as defined in the State Agreement), the 3500 acre feet/year of Treated Water for the Zone A Plant shall be calculated on each anniversary of the Zone A Completion Date on a rolling average basis over a five-year period by adding the actual annual production for each of the previous five years in which the Zone A Plant was operating and dividing such sum by 5; provided that (i) the actual annual production shall not be less than 3150 acre feet, and (ii) no more than 3850 acre feet may be included in the annual production. Prior to the fifth anniversary of the Zone A Completion Date, annual production from the Zone A Plant shall not be less than 3150 acre feet/year. If an event of a force majeure occurs affecting the Zone A Plant, the anniversary date for calculating the 3500 acre feet shall become the date the period of force majeure ends, the rolling average calculation shall be based on the actual annual production for the five-year period before the event of force majeure, and the period of force majeure shall not be included in the five-year period.

4.6. Termination of Process Enhancement. If at any time during the Operational Period for the Zone A Plant JMWCD is not taking Treated Water from the Bingham Canyon Plant pursuant to the terms of this Project Agreement, Kennecott shall have no obligation to operate, maintain or repair the process enhancement component of the Zone A Plant, and all obligations of Kennecott to produce water from the Zone A Plant under this Project Agreement or any other agreement shall be based on a Municipal Quality Water standard.

4.7. Zone A Water Rights. During the Operational Period for the Zone A Plant, at any time that JMWCD is distributing water from the Zone A Plant pursuant to this Project Agreement, Kennecott shall provide all water rights necessary for the operation of the Zone A Plant and shall obtain all required permits and approvals from the Utah State Engineer for the use of water in connection with the Zone A Plant as contemplated by this Project Agreement.

4.8. Limitation on Obligations to Accept and Produce Water. JMWCD shall have no obligation to accept Treated Water from the Zone A Plant in quantities in excess of 3850 acre feet per year. Kennecott shall have no obligation to produce Treated Water from the Zone A Plant in quantities in excess of 3500 acre feet per year on a rolling average basis as determined pursuant to Section 4.5.b, or to deliver such excess quantities to JMWCD. Water produced from the Zone A Plant that is not delivered to JMWCD pursuant to the terms of this Project Agreement

may be used, sold or disposed of by Kennecott in any manner it shall determine in its sole discretion.

4.9. Cooperation. JWCD agrees to cooperate with Kennecott in any permitting or land/easement acquisitions relating to the Bingham Canyon Plant.

4.10. Shutdowns Affecting the Bingham Canyon Plant.

a. Planned Shutdowns – Zone A Plant. Kennecott may temporarily shut-down the Bingham Canyon Plant for maintenance, repairs and replacements; provided, unless otherwise agreed by the parties, (i) that Kennecott provides at least 30 days' notice (or longer, if feasible) to JWCD, (ii) that Kennecott coordinates such planned, temporary shutdowns to allow JWCD to provide for alternative sources of water within its system during such shutdowns and to coordinate planned shutdowns of the Zone A Meter Station and JWCD Zone A Pipeline, (iii) that the actual annual production of Treated Water from the Zone A Plant shall not be reduced below 3150 acre feet as a result of such planned, temporary shutdowns, (iv) Kennecott shall use all reasonable efforts to avoid planned shutdowns between June and September, and (v) planned shutdowns shall not exceed a total of 35 days in any calendar year. Any such shutdown shall not be deemed to be a breach of this Project Agreement and shall not create any liability on the part of Kennecott.

b. Planned Shutdowns – Zone A Meter Station and JWCD Zone A Pipeline. JWCD may temporarily shut-down the Zone A Meter Station and JWCD Zone A Pipeline for maintenance, repairs and replacements; provided, unless otherwise agreed by the parties, (i) that JWCD provides at least 30 days' notice (or longer, if feasible) to Kennecott, (ii) that JWCD coordinates such planned, temporary shutdowns with Kennecott to allow coordination for planned shutdowns of the Zone A Plant, (iii) that the actual annual production of Treated Water from the Zone A Plant shall not be reduced below 3150 acre feet as a result of such planned, temporary shutdowns, (iv) JWCD shall use all reasonable efforts to avoid planned shutdowns between June and September, and (v) planned shutdowns shall not exceed a total of 35 days in any calendar year. Any such shutdown shall not be deemed to be a breach of this Project Agreement and shall not create any liability on the part of JWCD.

c. Emergency Shutdowns – Zone A Plant. In the event of an emergency shutdown of the Bingham Canyon Plant, Kennecott shall provide JWCD with as much notice of the shutdown as is possible by the best practicable means under the circumstances, and shall have the right to cease operating such plant or facilities during the shutdown. Any such shutdown shall not be deemed to be a breach of this Project Agreement and shall not create any liability on the part of Kennecott; provided that Kennecott shall use all reasonable efforts to perform the repair work as quickly as possible.

d. Emergency Shutdowns – Zone A Meter Station and JWCD Zone A Pipeline. In the event of an emergency shutdown of the Zone A Meter Station or the JWCD Zone A Pipeline, JWCD shall provide Kennecott with as much notice of the shutdown as is possible by the best practicable means under the circumstances, and shall

have the right to cease operating such facilities during the shutdown. Any such shutdown shall not be deemed to be a breach of this Project Agreement and shall not create any liability on the part of JWCD; provided that JWCD shall use all reasonable efforts to perform the repair work as quickly as possible.

4.11. Expansion. Nothing contained in this Project Agreement shall limit Kennecott's right, in its sole discretion, to modify or expand the Bingham Canyon Plant; provided, however that in no event shall any such modification or expansion increase or modify any obligation of JWCD under this Project Agreement. Any such modification or expansion shall not be subject to the terms of this Project Agreement.

5. Zone B Facilities.

5.1. Construction of Zone B Facilities. JWCD shall design, permit and construct the Zone B Facilities, as more fully described in the Proposal. Following construction of the Zone B Facilities, JWCD shall operate the Zone B Facilities and use all reasonable efforts to address any matters raised by the Utah Division of Drinking Water pursuant to Section IV of the State Agreement and to otherwise cause such facilities to become Complete and Operational by January 31, 2009. At such time as the Zone B Facilities are Complete and Operational, the Operational Period for the Zone B Facilities shall begin.

5.2. Obligations During Operational Period.

a. Operation of Zone B Facilities. During the Operational Period for the Zone B Facilities, JWCD shall provide feed water from the Zone B Water Rights, and/or from other sources available to JWCD, meeting the water quality and quantity parameters set forth in the Proposal and shall obtain all required permits and approvals from the Utah State Engineer for the use of water in connection with the Zone B Facilities as contemplated by this Project Agreement. During the Operational Period for the Zone B Facilities, or, if the Zone B Facilities are not Complete and Operational by February 1, 2009, for a period of 40 years from and after February 1, 2009, JWCD shall either (i) operate, maintain and replace the Zone B Facilities, as necessary to produce at least 3500 acre feet/year of Municipal Quality Water, or (ii) otherwise make up to 3500 acre feet of water available to the Affected Municipalities in accordance with Section 7.

b. Limitation on Obligations to Produce Water. JWCD shall have no obligation to produce or distribute water from the Zone B Facilities or otherwise make water available to Affected Municipalities in lieu of water produced by the Zone B Facilities in quantities in excess of the amount determined under Section 7.1.b or in excess of the quality specified by the State Agreement.

5.3. Zone B Contingencies. Notwithstanding any other provision of this Project Agreement:

a. If, notwithstanding all reasonable efforts by JWCD, the Zone B Facilities are not Complete and Operational by January 31, 2009, either party may terminate this Project Agreement as to the Zone B Facilities prior to January 31, 2010, provided

that the Zone B Facilities have not become Complete and Operational prior to the date of the notice.

b. In the event of a termination as to the Zone B Facilities under this Section 5.3 or a termination as to the Zone B Facilities prior to the Reconciliation Date under Section 13.3 or 13.4, all of the parties' rights and obligations with respect to the Zone B Facilities shall terminate except as provided in Sections 7 and 11, but all other terms of this Project Agreement shall remain in full force and effect.

5.4. Cooperation; Limited Role of Kennecott. Kennecott agrees to cooperate with JVWCD in any permitting or land/easement acquisitions relating to the Zone B Facilities. In addition, Kennecott shall fund the cost of the Zone B Facilities as and to the extent provided in Section 9.2. Except as stated in this Project Agreement, Kennecott shall have no other role or obligation relating to the Zone B Facilities or the provision or distribution of water produced by the Zone B Facilities to the Affected Municipalities, and JVWCD shall be solely responsible for such facilities and the provision and distribution of water from such facilities.

5.5. Expansion of Jordan Valley Membrane Plant. Nothing contained in this Project Agreement shall limit JVWCD's right, in its discretion, to expand the Jordan Valley Membrane Plant to include facilities in addition to the Zone B Facilities and the Lost Use Facilities; provided, however that in no event shall any such expansion increase or modify any obligation of Kennecott under this Project Agreement, including, without limitation, its obligation under Section 8.2 to dispose of concentrates produced from the Zone B Facilities. Any such additional facilities shall not be subject to the terms of this Project Agreement.

6. Lost Use Facilities.

6.1. Construction of Lost Use Facilities. JVWCD shall design, permit and construct the Lost Use Facilities as more fully described in the Proposal. Following construction of the Lost Use Facilities, JVWCD shall operate the same and use all reasonable efforts in order to cause the Lost Use Facilities to become Complete and Operational by January 31, 2009. At such time as the Lost Use Facilities are Complete and Operational, the Operational Period for the Lost Use Facilities shall begin.

6.2. Obligations During Operational Period.

a. Operation of Lost Use Facilities. During the Operational Period for the Lost Use Facilities, JVWCD shall provide feed water from the Lost Use Water Rights, meeting the water quality and quantity parameters set forth in the Proposal and shall obtain all required permits and approvals from the Utah State Engineer for the use of water in connection with the Lost Use Facilities as contemplated by this Project Agreement, and shall either (i) operate, maintain and replace the Lost Use Facilities, as necessary to produce between 1235 acre feet and 2300 acre feet per year of treated water, or (ii) otherwise make at least 1235 acre feet of water available to the Affected Municipalities in accordance with Section 7.

b. Limitation on Obligations to Produce Water. JVWCD shall have no obligation to produce or distribute water from the Lost Use Facilities or otherwise make wa-

ter available to Affected Municipalities in lieu of water produced by the Lost Use Facilities in quantities in excess of those contained herein or in quantities in excess of the requirements of the State Agreement.

6.3. Lost Use Contingencies. Notwithstanding any other provision of this Project Agreement:

a. If, notwithstanding all reasonable efforts by JWCD, the Lost Use Facilities are not Complete and Operational by January 31, 2009, either party may terminate this Project Agreement as to the Lost Use Facilities prior to January 31, 2010, provided that the Lost Use Facilities have not become Complete and Operational prior to the date of the notice.

b. In the event of a termination as to the Lost Use Facilities under this Section 6.3, all of the parties' rights and obligations with respect to the Lost Use Facilities shall terminate except as provided in Section 11, but all other terms of this Project Agreement shall remain in full force and effect.

6.4. Cooperation; Limited Role of Kennecott. Kennecott agrees to cooperate with JWCD in any permitting or land/easement acquisitions relating to the Lost Use Facilities. In addition, Kennecott agrees to advance to JWCD the Lost Use Capital Costs as described in Section 9.3.b for the construction of the Lost Use Facilities. Except as stated in this Section 6.4, Kennecott shall have no other role or obligation relating to the Lost Use Facilities or the provision or distribution of water produced by the Lost Use Facilities to the Affected Municipalities, and JWCD shall be solely responsible for such facilities and the provision and distribution of water from such facilities.

7. Water Sales to Affected Municipalities.

7.1. Obligation to Offer Water. JWCD shall offer water for sale to the Affected Municipalities as follows:

a. In the case of the Zone A Plant, from and after the date on which the Zone A Plant is Complete and Operational and for the duration of the Operational Period for the Zone A Plant, a total volume of water equal to the Treated Water produced annually from the plant and delivered to JWCD up to 3500 acre feet per year, determined on a rolling average basis in accordance with Section 4.5.b.

b. For the duration of the Operational Period for the Zone B Facilities if such facilities are Complete and Operational by January 31, 2009, or for 40 years from and after February 1, 2009 if the Zone B Facilities are not Complete and Operational by January 31, 2009, an amount up to 3500 acre feet of water per year from the Zone B Facilities or from other sources available to JWCD in lieu of water produced by the Zone B Facilities determined as follows:

i. JWCD shall have no obligation to make water available to Affected Municipalities from the Zone B Facilities or from other sources in lieu of

water produced by the Zone B Facilities until the Zone B Adjustment Factor reaches 50%.

ii. When the Zone B Adjustment Factor reaches 50%, JWWCD shall have a firm obligation to make 1750 acre feet of treated water per year available to Affected Municipalities in accordance with this Section 7.

iii. With each increase of 10% of the Zone B Adjustment Factor over 50%, JWWCD's firm obligation to make treated water available to Affected Municipalities in accordance with this Section 7 shall increase by 10% of 3500 acre feet per year until JWWCD's total commitment reaches 3500 acre feet per year.

c. From the Lost Use Facilities or from other sources available to JWWCD, from and after the date on which the Lost Use Facilities are Complete and Operational and for the duration of the Operational Period for the Lost Use Facilities, a quantity of water equal to the annual quantity of water corresponding to the Lost Use Facilities' capacity at Complete and Operational status, which will be at least 1235 acre-feet per year and up to 2300 acre feet per year.

7.2. Contracts and Rates. To purchase the water, an Affected Municipality shall enter into one or more written agreements with JWWCD to purchase water at a unit price which is calculated each year in accordance with the methodology specified in attached Appendix 4. Each agreement shall include such terms, conditions and representations as are then customarily used by JWWCD in similar, wholesale water agreements, and such additional terms, conditions and representations as JWWCD may, in its discretion, deem necessary or appropriate. All such agreements shall be subject to the Utah Water Conservancy Act, to the policies and procedures of JWWCD as they may be adopted, amended or rescinded periodically, and to other existing and future contractual obligations and representations of JWWCD, including those associated with its bonded indebtedness and those applicable to reductions in deliveries during times of drought or water or infrastructure capacity shortages.

7.3. Allocation Among Affected Municipalities. During the initial five years following written notice from JWWCD that water will be available from each Project Facility, each Affected Municipality may enter into a contract with JWWCD for up to the maximum amount of water annually at up to the maximum flow rates specified in Appendix 4 from such Project Facility or, in the case of the Zone B Facilities and the Lost Use Facilities, from other sources available to JWWCD. Thereafter, any remaining water from the Project Facility that is not committed to a contract with an Affected Municipality from time to time shall be available for sale by contract to any Affected Municipality on a first come, first served basis throughout the Operational Period in the case of the Zone B Facilities and the Lost Use Facilities, and so long as JWWCD is producing or receiving Treated Water from the Zone A Plant in the case of the Zone A Plant.

7.4. Additional Terms.

a. Each Affected Municipality shall be obligated to pay for the volume of water committed to it in its contract with JWWCD whether or not that municipality actu-

ally takes delivery of all or any portion of the water, provided the water is available for delivery.

b. If, in any year, the Zone A Plant does not produce an amount of Treated Water sufficient to satisfy completely the commitments made by JWWCD in its purchase agreements with the Affected Municipalities for water from the Zone A Plant, the available Treated Water, if any, shall be allocated among the Affected Municipalities in proportion to the respective amounts of Treated Water from the Zone A Plant for which the Affected Municipalities have contracted.

7.5. JWWCD's Continuing Obligation. As between Kennecott and JWWCD, JWWCD shall be responsible for fulfilling all obligations to the Affected Municipalities as set forth in this Section 7, and Kennecott shall have no liability for JWWCD's failure to perform. JWWCD shall be responsible for the distribution of any water from the Zone A Plant to the Affected Municipalities so long as JWWCD continues to receive water from the Zone A Plant pursuant to the terms of the Project Agreement, and Kennecott shall have no responsibility for the distribution of any such water to the Affected Municipalities.

7.6. Commingling of Water. JWWCD may commingle water produced by each Project Facility (provided, in the case of the Zone A Plant, that JWWCD is receiving Treated Water from the Zone A Plant pursuant to the terms of this Project Agreement) with other water within its system, and, for that reason, JWWCD may at its discretion deliver to the Affected Municipalities in satisfaction of JWWCD's contracts with the municipalities any water which meets applicable drinking water standards.

7.7. Uncommitted Water. Water produced from each Project Facility (provided, in the case of the Zone A Plant, that JWWCD is receiving Treated Water from the Zone A Plant pursuant to the terms of this Project Agreement) and not sold pursuant to contracts with the Affected Municipalities under this Section 7 may be used by JWWCD in any part of its water system.

7.8. JWWCD's Other Obligations Unaffected. The ability or inability of JWWCD to obtain contracts with one or more Affected Municipalities and the terms of any such contracts shall not affect JWWCD's other obligations under this Project Agreement.

8. Disposal of Concentrates.

8.1. Zone A Plant. Kennecott shall take and dispose of all concentrates produced by the Zone A Plant.

8.2. Zone B Facilities.

a. JWWCD shall be responsible for disposal of concentrates from the Zone B Facilities; provided, however, that upon not less than 180 days' advance written notice to Kennecott, JWWCD may elect to deliver Zone B concentrates to Kennecott for the balance of the Operational Period for the Zone B Facilities at the location where the existing Kennecott Tailings Pipeline intersects 7800 South, in which event Kennecott (subject to the other terms of this Project Agreement) shall take and dispose of the concentrates produced by the Zone B Facilities for such period.

b. If JVWCD elects to deliver Zone B concentrates to Kennecott under Section 8.2.a, JVWCD shall bear the risk and cost of constructing, operating, maintaining and replacing a pipeline to transport Zone B concentrates to the delivery point described in Section 8.2.a for further transportation and disposal by Kennecott.

c. So long as the Tailings Impoundment, the Tailings Slurry Pipelines and/or any other facility of Kennecott's (including the Alternative Disposal System) are being used for disposal of concentrates from the Zone B Facilities,

i. JVWCD shall assure that the Zone B concentrates do not contain pollutants or contaminants in excess of specifications set forth in Appendix 5 attached hereto, unless Kennecott otherwise agrees;

ii. Kennecott shall not be obligated to accept concentrates generated by facilities other than the Zone B Facilities, or concentrates in excess of the amount of concentrates generated by production at the Zone B Facilities of 3500 acre feet/year of Municipal Quality Water; and

iii. Kennecott's obligation to take concentrates from the Zone B Facilities shall terminate upon termination of this Project Agreement in whole or as to the Zone B Facilities. Kennecott shall perform and pay for the sampling and testing of Zone B concentrates delivered to Kennecott, such sampling and testing to occur at a frequency and level to be determined by Kennecott.

d. Notwithstanding the reference to certain shared assets in Sections 1.20 and 1.46, concentrates from the Zone B Facilities are limited to those produced from the Zone B Water Rights (or other sources of water from the Zone B Plume as described in the Proposal, and used by JVWCD to satisfy its obligations under Section I.C.2 of the State Agreement, but specifically excluding water from Lost Use Water Rights), and nothing in this Project Agreement or the definitions in Sections 1.20 and 1.46 shall be construed to expand the obligations of Kennecott hereunder.

8.3. Lost Use Facilities. JVWCD shall be responsible for disposal of concentrates from the Lost Use Facilities. In no event shall Kennecott be required to take or dispose of concentrates from the Lost Use Facilities.

8.4. Disposal Facilities and Permitting. The parties contemplate that concentrates from the Zone A Plant and, if applicable, Zone B concentrates delivered to Kennecott in accordance with Section 8.2.a, will initially be disposed of in the Tailings Impoundment utilizing the Tailings Slurry Pipelines. However, Kennecott, in its discretion, may elect to use any other legal method of transportation and disposal of such concentrates, and Kennecott shall be free to terminate use of the Tailings Slurry Pipelines and the Tailings Impoundment, or to use the Tailings Slurry Pipelines and Tailings Impoundment for any other purposes, provided that Kennecott continues to take and dispose of such concentrates. After Kennecott's operation of the Tailings Impoundment for tailings disposal ceases, or if at any time disposal of Zone A or Zone B concentrates to the Tailings Impoundment is no longer permitted, the parties anticipate that concentrates from the Zone A Plant and, if applicable, the Zone B Facilities, will be disposed of in the

Great Salt Lake. Accordingly, following execution of this Project Agreement, (i) Kennecott shall proceed with all permitting necessary for concentrate disposal from the Zone A Plant and the Zone B Facilities in the Tailings Impoundment, (ii) the parties may proceed with development of a permit package for the discharge of concentrates from the Zone A Plant and the Zone B Facilities directly to the Great Salt Lake, and (iii) JMWCD shall proceed with all permitting necessary for concentrate disposal from the Jordan Valley Membrane Plant.

8.5. JMWCD Election to Participate in Alternative Disposal System

a. If (i) Kennecott cannot obtain or renew on reasonable terms and conditions the necessary permits to dispose of the concentrates from the Zone A Plant and, if applicable, the Zone B Facilities in the Tailings Impoundment or (ii) Kennecott determines at any time that continued disposal of such concentrates in the Tailings Impoundment is reasonably likely to cause a violation of any law, regulation or water discharge or other permit associated with the Tailings Impoundment which cannot be remedied on reasonable terms and conditions unless the concentrates are no longer deposited in the impoundment, Kennecott shall give written notice to JMWCD that an Alternative Disposal System will be required.

b. Within 90 days following receipt of notice from Kennecott under Section 8.5.a, JMWCD shall notify Kennecott in writing whether JMWCD elects to participate in the planning and contribute to the construction of the Alternative Disposal System.

c. If JMWCD elects to participate in the planning and funding of the Alternative Disposal System, then the parties shall proceed to plan and implement the system in accordance with Section 8.6.

d. If JMWCD does not elect to participate in the planning and funding of the Alternative Disposal System, then:

i. Kennecott shall be free to dispose of concentrates from the Zone A Plant in any legal manner Kennecott may choose.

ii. If JMWCD has previously elected to deliver Zone B concentrates to Kennecott for disposal in accordance with Section 8.2.a, JMWCD's right to deliver such concentrates to Kennecott shall terminate 270 days following the date on which Kennecott gave notice to JMWCD of the need for the Alternative Disposal System under Section 8.5.a, and, whether or not JMWCD has previously elected to deliver Zone B concentrates to Kennecott for disposal, Kennecott shall thereafter have no further obligation to take or dispose of concentrates from the Zone B Facilities. The foregoing shall not alter or interfere with Kennecott's right to cease taking concentrates pursuant to Section 8.7 or 8.8.

iii. If JMWCD has not previously elected to deliver Zone B concentrates to Kennecott for disposal in accordance with Section 8.2.a, JMWCD's right to elect to deliver such concentrates to Kennecott shall terminate, and Kennecott

shall have no further obligation to take or dispose of concentrates from the Zone B Facilities.

8.6. Planning and Funding of Alternative Disposal System. If JMWCD elects to participate in the planning and funding of the Alternative Disposal System in accordance with Section 8.5.c, then the parties shall proceed to plan, fund and construct the system as follows:

a. So long as and to the extent all or portions of the Tailings Slurry Pipelines may be useful in the Alternative Disposal System and such use of the Tailings Slurry Pipelines continues to be technically and economically viable, and subject to Kennecott's right to cease taking concentrates as provided in Sections 8.7 and 8.8, Kennecott shall either (i) make such portions of the Tailings Slurry Pipelines available for use in the Alternative Disposal System or (ii) at Kennecott's sole expense, provide an alternative means of transportation in lieu of the portions of the Tailings Slurry Pipelines that Kennecott elects not to use or to use for other purposes. Notwithstanding the foregoing, Kennecott shall have no obligation under this Project Agreement to replace the Tailings Slurry Pipelines if the same are damaged or destroyed in whole or in part or are otherwise at the end of their useful life, it being understood that Kennecott's obligation as to such pipelines is to operate and maintain such pipelines. If the Tailings Slurry Pipelines are damaged or destroyed in whole or in part or are otherwise at the end of their useful life, any alternative or replacement means of transportation of concentrates that is required as part of the Alternative Disposal System shall be funded pursuant to the provisions of this Section 8.6.

b. All costs (including, without limitation, design, permitting and construction costs) associated with design and construction of the Alternative Disposal System shall be shared equally by the parties up to the total amount of \$4,196,000 (i.e., \$2,098,000 each; October 2002 dollars based on the ENR Index).

c. Costs in excess of \$4,196,000 (October 2002 dollars based on the ENR Index) shall be borne by Kennecott.

d. The Alternative Disposal System shall be constructed, owned and operated by Kennecott.

8.7. Potential Violations of Laws/Permits Affecting Disposal Facilities. If the Tailings Impoundment, Tailings Slurry Pipelines and/or any other facility of Kennecott's (including the Alternative Disposal System) are being used for the disposal of concentrates from the Zone A Plant or, if applicable, the Zone B Facilities, and Kennecott reasonably believes a violation of any law, regulation or water discharge or other permits associated with the Tailings Impoundment, Tailings Slurry Pipelines or other facility is likely to occur, Kennecott shall have the right to cease taking such concentrates for a period not to exceed 90 days, or such additional time as may be necessary to address the cause of the violation or potential violation. Any such action shall not be deemed a breach of this Project Agreement and shall not create any liability on the part of Kennecott. The parties agree to work together to resolve any problems with the concentrates from the Zone A Plant or, if applicable, the Zone B Facilities which may be the basis for the violation or potential violation.

8.8. Shutdowns Affecting Concentrate Disposal Facilities. So long as the Tailings Slurry Pipelines, Tailings Impoundment or other facilities of Kennecott's (including the Alternative Disposal System) are being used to dispose of concentrates from the Zone A Plant or, if applicable, the Zone B Facilities, the parties recognize that both planned and emergency shutdowns of the Tailings Slurry Pipelines, Tailings Impoundment and/or other facilities may be necessary for planned maintenance, repairs and replacements as well as for emergency shutdowns or repairs of the Tailings Slurry Pipelines, Tailings Impoundment and/or other facilities. So long as the Tailings Slurry Pipelines or Tailings Impoundment is also being used in Kennecott's operations, the parties also recognize that emergency shutdowns of the Tailings Slurry Pipelines, Tailings Impoundment and/or other facilities used by Kennecott in its operations that discharge into them may be necessary for planned maintenance, repairs and replacements as well as for emergency shutdowns or repairs associated with such operations.

a. Planned Shutdowns. Kennecott may temporarily shut-down the Tailings Slurry Pipelines, Tailings Impoundment and/or other facilities for maintenance, repairs and replacements; provided, unless otherwise agreed by the parties, (i) that Kennecott provides at least 30 days' notice (or longer, if feasible) to JVWCD, (ii) that Kennecott coordinates such planned, temporary shutdowns with JVWCD, (iii) Kennecott shall use all reasonable efforts to avoid planned shutdowns between June and September, and (iv) Kennecott shall use all reasonable efforts to limit such shutdowns to a total of 35 days or less in any calendar year. Any such shutdown shall not be deemed to be a breach of this Project Agreement and shall not create any liability on the part of Kennecott.

b. Emergency Shutdowns. In the event of an emergency shutdown of the Tailings Slurry Pipelines, Tailings Impoundment and/or other facilities, Kennecott shall provide JVWCD with as much notice of the shutdown as is possible by the best practicable means under the circumstances, and shall have the right to cease operating such facilities during the shutdown. Any such shutdown shall not be deemed to be a breach of this Project Agreement and shall not create any liability on the part of Kennecott; provided that Kennecott shall use all reasonable efforts to perform the repair work as quickly as possible.

c. Suspension of Concentrate Disposal. Kennecott shall have the right to cease taking concentrates during the foregoing shutdowns.

8.9. Ownership of Disposal Facilities. So long as any part of the Tailings Impoundment, the Tailings Slurry Pipelines and/or any other facility of Kennecott's (including the Alternative Disposal System) is being used for the disposal of concentrates from the Zone A Plant or, if applicable, the Zone B Facilities, (i) Kennecott shall be responsible for and shall pay all costs associated with operation and maintenance of the Tailings Slurry Pipelines, the Tailings Impoundment and/or other facility, and (ii) ownership of the Tailings Slurry Pipelines, the Tailings Impoundment and/or other facility shall remain with Kennecott, and JVWCD shall have no claim of ownership in such pipelines, impoundment or other facility unless the parties otherwise agree.

9. Financial Obligations for Project Facilities.

9.1. Bingham Canyon Plant.

a. General. Subject to JMWCD's obligations under Sections 9.1.b, 9.1.c, 9.1.d and 9.1.e, Kennecott shall pay all costs associated with the design, permitting, construction, operation, maintenance and replacement of the Bingham Canyon Plant (including Process Enhancement Construction Costs) and the acquisition of any lands and easements necessary to fulfill its obligations under Section 4.

b. Process Enhancement Costs.

i. All Process Enhancement Costs are being incurred for the benefit of JMWCD and are to be paid or reimbursed by JMWCD as provided herein, and Kennecott shall have no obligation to incur costs for process enhancement in excess of the amounts described in this Section 9.1.b.

ii. JMWCD shall reimburse Kennecott for Process Enhancement Construction Costs for the Zone A Plant by paying to Kennecott the fixed sum of \$8.36 per acre foot for the first 70,000 acre feet of Treated Water delivered to JMWCD from the Zone A Plant, payable annually on a calendar year basis on or before January 30 of each year for water delivered during the previous year.

iii. Commencing when the Zone A Plant is Complete and Operational, at any time that JMWCD is receiving water from the Zone A Plant, JMWCD shall reimburse Kennecott for Process Enhancement Operating, Maintenance and Replacement Costs for the Zone A Plant in the annual amount of \$12.30 (October 2002 dollars based on the ENR Index) for each acre foot of Treated Water produced by the Zone A Plant and delivered to JMWCD as described in Section 4.5.b. The payment shall be due on or before January 30 of the following year.

c. Taste and Odor Elimination Costs. Kennecott shall be responsible for all costs necessary to eliminate objectionable tastes and odors from water treated by the Zone A Plant due to causes above the Zone A Meter Station in order to meet the taste and odor standards for Zone A Treated Water established under Section 1.36 and Appendix 3. JMWCD shall be responsible for all taste and odor objections from such water due to causes below the Zone A Meter Station.

d. Avoided Capital Costs. JMWCD shall reimburse Kennecott for avoided water supply capital costs for the Zone A Plant by paying to Kennecott the fixed sum of \$56.32 per acre foot for the first 70,000 acre feet of Treated Water delivered to JMWCD from the Zone A Plant, payable annually on a calendar year basis on or before January 30 of each year for water delivered during the previous year.

e. Avoided Operating and Maintenance Costs. Commencing when the Zone A Plant is Complete and Operational, at any time that JMWCD is receiving water from the Zone A Plant, JMWCD shall pay to Kennecott \$49 (1995 dollars based on the ENR

Index) for each acre foot of Treated Water produced by the Zone A Plant and delivered to JWWCD for avoided water supply operating, maintenance and replacement costs. Such payments shall be payable annually on a calendar year basis on or before January 30 of each year for water delivered during the previous year.

f. Deferral in Event of Breach. Notwithstanding the foregoing, if Kennecott is in breach of any material provision of this Project Agreement relating to the Bingham Canyon Plant at the time any payment to Kennecott would otherwise be due under this Section 9.1, the due date for such payment shall be deferred until such time, if ever, as the breach is cured.

9.2. Zone B Facilities.

a. General. Subject to payment of the Kennecott Reconciliation Payment pursuant to Section 10.1, JWWCD shall pay the costs of the design, permitting, construction, operating, maintenance and replacement of the Zone B Facilities (including Process Enhancement Costs) and the acquisition of any lands and easements necessary to fulfill JWWCD's obligations under Section 5.

b. Designation of Funds. Provided that no termination of the Project Agreement as to the Zone B Facilities has occurred, Kennecott shall pay to JWWCD for the design and construction of the Zone B Facilities pursuant to the terms of this Section 9.2.b the sum of \$22,481,000, plus interest at the rate of 7% per annum from September 5, 2002 through the date of execution of this Project Agreement, and thereafter at the PTIF Rate, on the outstanding balance. Such amount shall be divided into the following funds:

- i. Design Fund: \$2,200,000 (October 2002 dollars at the PTIF Rate).
- ii. Construction Fund: 90% of the remaining balance.
- iii. Construction Retainage Fund: 10% of the remaining balance.

c. Contract Forms. All contracts entered into by JWWCD in connection with the design and construction of the Zone B Facilities shall include the general conditions consistent with JWWCD's existing form of General Conditions for construction contracts, including (i) requirements for lien waivers or similar documentation to accompany interim and final applications for payment, and (ii) insurance providing coverage and terms appropriate in accordance with JWWCD's reasonable risk management practices for the services, materials or work to be supplied or performed. JWWCD shall notify Kennecott of any material deviation to the foregoing requirements prior to execution of the applicable contract.

d. Disbursements from Design Fund. The Design Fund shall be released to JWWCD in 12 equal monthly installments commencing 60 days after the date of this Project Agreement. JWWCD shall give notice to Kennecott when the design of the Zone B Facilities has been completed, including the name of a proposed engineering firm which will certify the progress of construction (the "Project Engineer"). Kennecott shall advise JWWCD within ten working days of receipt of such notice whether the proposed

engineering firm is acceptable, and if not JVWCD and Kennecott shall select another mutually acceptable engineering firm to serve as the Project Engineer for purposes of this Section 9.2.

e. Disbursements from Construction Fund.

i. Subject to the terms of this Section 9.2.e, and provided that no termination of this Project Agreement as to the Zone B Facilities has occurred, the Construction Fund shall be released to JVWCD in monthly installments during construction.

ii. JVWCD shall prepare and submit to Kennecott monthly disbursement requests, including the following:

A. An Application and Certificate for Payment (AIA Document G702 or similar JVWCD form) executed by JVWCD and the Project Engineer showing the percentages of work completed during the construction period and stating that all portions of the construction of the Zone B Facilities for which disbursement is requested have been completed and that all labor, materials and other items for which disbursement is requested have been paid in full with the exception of labor and materials supplied subsequent to the period covered by the last Application and Certificate for Payment; and

B. The general contractor's affidavit of lien releases from the contractors, materialmen or subcontractors who provided labor, services or materials in connection with the construction of the Zone B Facilities during the period for which disbursement is requested, together with unconditional lien releases for all prior periods.

iii. Kennecott shall pay to JVWCD the amount covered by each properly completed monthly disbursement request within 30 days following receipt by Kennecott.

iv. The amount of funds advanced pursuant to the Agreement for Funding Construction for the Widening of 7800 South dated as of August 1, 2003 shall also be credited as releases to JVWCD from the Construction Fund under this Section 9.2.e.

v. The remaining balance, if any, in the Construction Fund shall be disbursed to JVWCD upon delivery to Kennecott of a certificate from the Project Engineer that construction of the Zone B Facilities has been completed and the Utah Division of Drinking Water has issued an operating permit for the facilities.

f. Disbursement of Construction Retainage Fund. At such time as the Zone B Facilities are Complete and Operational, Kennecott shall release the Construction Retainage Fund to JVWCD.

g. Default in Payment by Kennecott. If, at any time when the Zone B Adjustment Factor is between 50% and 100%, (i) Kennecott defaults in its obligation to release funds to JWCD under Section 9.2d, 9.2e, or 9.2f, and (ii) JWCD elects to increase its firm commitment to make water available under Section 7.1.b to 3500 acre feet in accordance with Section VIII.C.2 of the State Agreement, then Kennecott's obligation to release funds to JWCD pursuant to Section 9.2d, 9.2e, or 9.2f shall be reduced by the amounts disbursed to JWCD by the Trustee under Section VIII.C.2 of the State Agreement. If the amount so disbursed to JWCD by the Trustee equals or exceeds the remaining amount of Kennecott's remaining obligation to release funds pursuant to Sections 9.2d, 9.2e and 9.2f, then Kennecott's obligation to release funds pursuant to Section 9.2d, 9.2e or 9.2f shall terminate.

h. Deferral in Event of Breach by JWCD. Notwithstanding the foregoing, if JWCD is in breach of any material provision of this Project Agreement relating to the Zone B Facilities at the time any payment to JWCD would otherwise be due under this Section 9.2, the due date for such payment shall be deferred until such time, if ever, as the breach is cured.

i. Cost Overruns. Any and all costs to design, permit, construct, operate, maintain or replace the Zone B Facilities in excess of the amount described in Section 9.2.b shall be borne by JWCD.

9.3. Lost Use Facilities.

a. Design and Construction Costs. Subject to advances by Kennecott as set forth in Section 9.3.b and reimbursement from the Trust Fund as set forth in Section VI of the State Agreement, JWCD shall pay all costs associated with the design, permitting, construction, operation, maintenance and replacement of the Lost Use Facilities and the acquisition of any lands and easements necessary to fulfill its obligations under Section 6.

b. Lost Use Capital Costs. Upon the Construction Commencement Date of the Lost Use Facilities as defined in Section VI.D of the State Agreement, Kennecott shall advance to JWCD the sum of \$2,093,400 (October 2002 dollars at the PTIF Rate) for capital costs for the Lost Use Facilities.

c. Deferral in Event of Breach. Notwithstanding the foregoing, if JWCD is in breach of any material provision of this Project Agreement relating to the Lost Use Facilities at the time payment to JWCD would otherwise be due under this Section 9.3, the due date for such payment shall be deferred until such time, if ever, as the breach is cured.

9.4. No Other Trust Fund Contribution. Except as expressly set forth in this Project Agreement and the State Agreement, JWCD shall not seek disbursement or reimbursement from the Trust Fund for any other costs, including any Process Enhancement Costs.

9.5. Treated Water. All costs associated with storing and distributing Treated Water produced from the Bingham Canyon Plant (so long as JWCD is receiving Treated Water from

the Bingham Canyon Plant) and water from the Jordan Valley Membrane Plant shall be borne by JWCD.

9.6. Other Monies. Each party may receive disbursement of funds or reimbursement of costs from sources other than the Trust Fund or the other party, and except as provided in subparagraphs 6.6.c, 6.6.d and 6.6.e of Appendix 6, the other party shall have no claim to such monies.

10. Reconciliation of Costs.

10.1. Reconciliation and Final Payments. Except as provided in Section 5.3.b and Section 11, on the Reconciliation Date:

a. Kennecott Reconciliation Payment. Kennecott shall pay the Kennecott Reconciliation Payment to JWCD.

b. Zone B Avoided Capital Costs. JWCD shall pay to Kennecott on the Reconciliation Date the sum of \$756,500 (October 2002 dollars at the ENR Rate) for avoided water supply capital costs for the Zone B Facilities.

c. Lost Use Capital Costs. JWCD shall repay to Kennecott the Lost Use Capital Costs previously advanced to JWCD pursuant to Section 9.3.b, plus interest on such Lost Use Capital Costs at the PTIF Rate from the date of the advance through the Reconciliation Date.

10.2. Suspension of Payments. Notwithstanding anything contained in Section 10.1:

a. Kennecott Reconciliation Payment. If JWCD is in breach of any material provision of this Project Agreement relating to the Zone B Facilities at the time payment of the Kennecott Reconciliation Payment to JWCD would otherwise be due under Section 10.1.a, the due date for such payment shall be deferred until such time, if ever, as the breach is cured.

b. Zone B Avoided Capital Costs. If Kennecott is in breach of any material provision of this Project Agreement relating to the Zone B Facilities at the time payment to Kennecott of the Zone B Avoided Capital Costs under Section 10.1.b would otherwise be due under Section 10.1.b, the due date for such payment shall be deferred until such time, if ever, as the breach is cured.

c. Lost Use Capital Costs. If Kennecott is in breach of any material provision of this Project Agreement relating to the Lost Use Facilities at the time payment to Kennecott of the Lost Use Capital Costs would otherwise be due under Section 10.1.c, the due date for such payment shall be deferred until such time, if ever, as the breach is cured.

11. Impact of Termination on Funding Matters.

11.1. Expenditures for Own Account. On termination (in whole or in part) of this Project Agreement, any funds expended by a party in furtherance of the Project related to the facilities affected by the termination shall be for that party's account without right of further credit against other funds or reimbursement from the other party except as provided in Section 5.3.b and this Section 11.

11.2. Termination as to Zone B Facilities – Zone B Adjustment Factor Less than 50%. If this Project Agreement terminates as to the Zone B Facilities prior to the time the Zone B Adjustment Factor reaches 50% for any reason other than a breach by Kennecott of any of its material obligations hereunder relating to the Zone B Facilities, then:

a. Kennecott shall not be obligated to pay to JWCD the Kennecott Reconciliation Payment or advance or pay any other costs under Section 9.

b. JWCD shall retain the Jordan Valley Membrane Plant building and, at its option, may elect within ninety (90) days following termination to retain one or more of the three Zone B well sites for which Kennecott paid under the Escrow Agreement, and all or part of any other items of Zone B equipment and personal property which have been paid for with funds provided by Kennecott as Zone B construction costs pursuant to Section 9.2.b.

c. Within ninety (90) days following termination, JWCD shall reimburse Kennecott for the portion of the funds provided by Kennecott to purchase the three Zone B Well sites under the Escrow Agreement and for Zone B construction costs provided by Kennecott pursuant to Section 9.2.b allocable to the Jordan Valley Membrane Plant building and to any other items retained by JWCD.

d. At Kennecott's option, within ninety (90) days following termination, JWCD shall transfer to Kennecott the Zone B well sites paid for by Kennecott pursuant to the Escrow Agreement which JWCD does not elect to retain (but without any interest in or rights under the Zone B Water Rights), and those items of Zone B equipment and personal property which have been paid for with funds provided by Kennecott pursuant to Section 9.2.b, which JWCD does not elect to retain; provided, however, that Kennecott shall promptly repair and restore any damage caused by the removal of any such items.

11.3. Termination as to Zone B Facilities – Zone B Adjustment Factor Equal to or Greater than 50%. If this Project Agreement terminates as to the Zone B Facilities after the time the Zone B Adjustment Factor reaches 50% but prior to the Reconciliation Date for any reason other than a breach by Kennecott of any of its material obligations hereunder relating to the Zone B Facilities, then:

a. Kennecott shall release to JWCD all amounts accrued but not previously paid under Sections 9.2.d, 9.2.e and 9.2.f through the date of termination, and the Zone B Adjustment Factor shall be increased accordingly.

b. Kennecott shall pay to JVWCD an amount equal to the Adjustment Factor times the Kennecott Reconciliation Payment.

c. Kennecott shall not be obligated to advance or pay any further costs under Sections 9.2.d, 9.2.e and 9.2.f accruing after the date of termination..

d. JVWCD shall retain the Jordan Valley Membrane Plant building and all associated well sites, easements, equipment and personal property.

e. Provided that JVWCD is not in material breach of the provisions of this Agreement relating to the Zone B Facilities, JVWCD shall have the right to elect to increase its commitment to deliver water to Affected Municipalities under Section 7.1.b to 3500 acre feet per year and receive payments from the Trustee in accordance with Section VIII.C.2 of the State Agreement.

11.4. Termination as to the Lost Use Facilities. If this Project Agreement terminates as to the Lost Use Facilities before the Reconciliation Date, then within ninety (90) days following such termination JVWCD shall reimburse Kennecott for Lost Use Capital Costs advanced by Kennecott under Section 9.3.b.

11.5. Termination as to the Zone A Plant. In the event of any termination of this Project Agreement as to the Zone A Plant, JVWCD shall pay to Kennecott for Zone A Process Enhancement Operating, Maintenance and Replacement Costs, Zone A Avoided Capital Costs and Zone A Avoided Operating, Maintenance and Replacements Costs the amounts due under Sections 9.1.b.iii, 9.1.d and 9.1.e for water delivered prior to the date of termination, payable within 90 days following termination. In addition, if the termination occurs after the Zone A Plant is Complete and Operational, JVWCD shall pay to Kennecott for Zone A Process Enhancement Construction Costs an amount equal to \$364,780 times a fraction, the numerator of which is the number of years left in the Zone A Operational Period and the denominator of which is 40, payable within 180 days following termination.

11.6. No Other Refunds or Payments. Except for (i) the payment obligations as provided in Section 10.1, (ii) the full or partial refunds as provided in Section 11, or (iii) the payment to Kennecott of insurance proceeds under subparagraphs 6.6.c, 6.6.d and 6.6.e of Appendix 6, JVWCD shall have no other obligation to pay or refund any portion of any funds advanced or paid by Kennecott hereunder.

12. General Rights and Duties of the Parties.

12.1. Inspection Rights. Upon reasonable advance notice and during normal business hours, either party, at its sole expense, shall have access to and the right to inspect the Project Facilities and operating and maintenance records of the other party. The right to access and inspect the construction sites and operations shall be at the party's sole risk, shall not interfere with construction and/or operations, and shall be subject to safety regulations imposed by the other party. The right to access and inspect operating and maintenance records shall be subject to any confidentiality restrictions that may be applicable.

12.2. Compliance with Laws. Each party, in the performance of its obligations under this Project Agreement, shall (i) comply with all applicable federal, state and local laws, rules, regulations, orders and permits, including laws pertaining to health, safety and the environment (herein, “Laws”), (ii) pay all taxes, assessments and similar charges affecting the assets used in the Project to the extent owed by such party, (iii) keep its assets used in the Project free from mechanic’s and other liens or encumbrances, and (iv) notify the other party of claims, or allegations of violations of laws, by any governmental agency or third party that relate to the Project or assets used in the Project, and, subject to the provisions of Section 12.6, if applicable, take all such steps as it deems appropriate to defend against such claims or allegations.

12.3. Insurance.

a. General. Each party shall maintain comprehensive general liability insurance, all-risk property damage insurance, automobile liability insurance, worker’s compensation insurance and such other insurance as is usually carried by persons operating similar plants or facilities, in such amounts and against such insurable hazards as may be reasonable; provided, however, that the parties acknowledge that (i) as of the date of this Project Agreement, JVWCD does not carry business interruption insurance or earthquake, flood or property damage insurance on any pipelines or wells, (ii) any financial reserves or insurance maintained by JVWCD (other than the builder’s risk policy described in Paragraph 1.a of Appendix 6) is applicable to all operations of JVWCD in JVWCD’s discretion (and not just assets subject to this Project Agreement).

b. Zone B Facilities. In addition to the provisions of Section 12.3.a, during the construction of the Zone B Facilities and until the full reduction and release of the Zone B ILC, JVWCD shall maintain the type of insurance and shall comply with the other covenants and obligations set forth in the insurance schedule attached to this Project Agreement as Appendix 6.

12.4. Standard of Care. Each party agrees to perform its obligations in a good, workmanlike and efficient manner and in accordance with the terms of any ancillary agreements. Such performance shall be subject to normal operational matters.

12.5. Governmental Approvals. Each party agrees to use all reasonable efforts to obtain and maintain the permits, approvals and agreements required from the Trustee, the State Engineer, other State authorities and the EPA in order to implement the Project.

12.6. Environmental Indemnity.

a. Kennecott agrees to defend and indemnify JVWCD and JVWCD’s trustees, officers, employees and agents (each a “JVWCD indemnified party”) and to hold each JVWCD indemnified party harmless from and against any and all Environmental Claims arising directly or indirectly from or out of or relating to (i) the contamination and environmental conditions which are described in the Consent Decree or the Remedial Investigation/Feasibility Study prepared by Kennecott in connection with the CERCLA remedial response to the contaminated groundwater plume in the Affected Area, (ii) the groundwater extracted by and collected and transported in the Zone A Collection Facili-

ties, (iii) the permeate or concentrates produced from the Zone A Pretreatment Facilities, (iv) the concentrates produced from the Zone A Plant and the transportation or disposal thereof, or (v) the concentrates produced from the Zone B Facilities from and after delivery to Kennecott under Section 8.2.a, provided that such Zone B concentrates meet the requirements of Appendix 5.

b. The foregoing indemnity shall not apply to any Environmental Claims to the extent such claims arise from the gross negligence or intentional wrongful acts of JWWCD, or to the extent such claims arise from the transportation, storage, use, delivery, sale, release or disposal of (i) permeate, concentrates or treated water from the Lost Use Facilities, (ii) permeate or treated water from the Zone B Facilities, (iii) concentrates from the Zone B Facilities prior to delivery to Kennecott under Section 8.2.a, or (iv) Treated Water produced from the Zone A Plant after delivery to JWWCD at the Zone A Meter Station.

c. JWWCD shall promptly notify Kennecott of any Environmental Claim covered by the foregoing indemnity when JWWCD becomes aware of such claim, and JWWCD shall reasonably cooperate with Kennecott in the defense of any such claim. At such time as Kennecott has assumed the defense of any Environmental Claim covered by the foregoing indemnity, it shall have exclusive control over, and shall be solely responsible for the cost of, selection of counsel and experts and management of the case, and it shall have no obligation to pay for fees of any consultants, counsel or other experts that JWWCD may incur. The foregoing indemnity shall not apply to any Environmental Claims to the extent such claims are incrementally increased, or Kennecott's ability to defend against any claim is impaired, by JWWCD's failure to give prompt notice or to reasonably cooperate with Kennecott in the defense of such claim. Kennecott shall keep JWWCD informed of the progress and status of any matter with respect to which Kennecott defends JWWCD under this Section 12.6. The foregoing indemnity shall survive any termination of this Project Agreement.

12.7. State Agreement. If Kennecott elects to pursue administrative remedies or litigation with regard to the determination under the State Agreement that the Zone B Facilities are not Complete and Operational, JWWCD shall cooperate with Kennecott in such proceedings. In addition, each party agrees to assure that the Trustee timely receives all notices, reports or other communications required by such party under the State Agreement.

12.8. Sovereign Immunity. Nothing contained herein shall adversely affect any immunity from suit, or any right, privilege, claim or defense, which JWWCD or its employees, officers or trustees may assert under state or federal law, including but not limited to the Utah Governmental Immunity Act, Utah Code Ann. §§ 63-30-1, et seq., (the "Act"). All claims against JWWCD or its employees, officers and trustees are subject to the provisions of the Act, which Act shall control all procedures and limitations in connection with any claim of liability against JWWCD.

12.9. Kennecott's Other Rights Unaffected. Subject to appropriate approvals and water rights, Kennecott shall have the right to continue to extract water from and inject water into the Affected Area for operations, containment or any other lawful purposes.

13. Termination of Agreement.

13.1. General. This Project Agreement shall terminate in whole or part as expressly provided in the following Sections, unless earlier terminated by agreement of the parties:

<u>Section</u>	<u>Basis</u>
4.2.a	Zone A Plant not Complete and Operational
5.3.a	Zone B Facilities not Complete and Operational
6.3.a	Lost Use Facilities not Complete and Operational
13.2	Failure of Conditions
13.3	Inability to Obtain Permits
13.4	Inability to Dispose Concentrates

In no case shall this Project Agreement continue beyond the last to expire of the Operational Period of the Zone A Plant, the Operational Period of the Zone B Facilities or the Operational Period of the Lost Use Facilities, unless the parties otherwise agree. Nothing in the preceding sentence shall be construed to permit provisions pertaining to a plant or facility that is at the end of its Operational Period to survive.

13.2. Automatic Termination for Failure of Certain Conditions. The validity and enforceability of this Project Agreement are subject to the Trustee's execution of the State Agreement. If this condition fails to occur by February 28, 2004, this Project Agreement shall automatically terminate and the provisions of Section 11 shall apply.

13.3. Termination for Inability to Obtain Permits. Either party may elect to terminate this Project Agreement by giving notice of termination to the other party if it is unable to obtain on reasonable terms governmental approvals, permits and permit renewals required to fulfill its obligations under this Project Agreement; provided, however that the termination shall only extend to the facility or facilities affected by the approvals, permits or renewals that are not obtained.

13.4. Termination for Inability to Dispose of Concentrates. Either party may elect to terminate this Project Agreement by giving notice of termination to the other party if within a two year period following a determination that the Tailings Impoundment will not be used or will no longer be used, there is failure to obtain, or an inability to obtain on reasonable terms, the parties' agreement or governmental approvals to dispose of concentrates in the Great Salt Lake or some other facility; provided, however, that the termination shall only extend to the facility or facilities whose concentrates are affected.

13.5. Election to Terminate. Except as otherwise specifically provided elsewhere in this Project Agreement (e.g., Section 5.3.a), any election that may be made to terminate this Project Agreement in whole or in part must be made by the applicable party within 60 days after the deadline (if applicable) for the required approval or action. The right to terminate shall be lost if a party fails to make a timely election.

13.6. Certain Rights of Parties on Termination. In the event of a full or partial termination of this Project Agreement, (i) each party shall remain liable for its obligations under this

Project Agreement which have accrued prior to the date of termination or which, by their express terms, survive the full or partial termination; (ii) neither party shall have any liability to the other party for any costs or losses caused by the full or partial termination of this Project Agreement; provided, however, that any claim for damages arising from any breach by the other party of its representations, covenants or obligations occurring prior to the full or partial termination shall survive; (iii) unless the parties otherwise agree, any approved or unapproved change applications affecting water rights, permit applications, permit modification applications or similar actions related to the facilities affected by the termination may be withdrawn or further changed by the party originally submitting the application; and (iv) any termination as to the Bingham Canyon Plant shall not preclude Kennecott from proceeding with the Zone A Plant as outlined in the Proposal and contemplated by the State Agreement or on any other basis.

14. Events of Default and Remedies.

14.1. Events of Default. The breach or default by a party of any material representation, covenant, agreement or performance required under this Project Agreement which continues for thirty (30) days after notice by the non-defaulting party shall constitute an Event of Default under this Project Agreement; provided, however, that if the breach or default requires more than thirty (30) days to cure and the defaulting party has initiated such cure within the thirty (30) days and diligently pursues the same, the defaulting party shall have such additional time as may be necessary to effect the cure, but in no event may such additional time exceed ninety (90) days unless the parties otherwise agree.

14.2. Remedies. If an Event of Default has occurred and is continuing, the non-defaulting party shall have all remedies available to it at law and in equity, including, without limitation, the right to seek termination of all or part of this Project Agreement, the right to seek damages and the right to injunctive relief, except (i) where expressly limited in this Project Agreement, and (ii) neither party shall in any event, or under any circumstances, be liable for any consequential damages or damages for lost profits.

14.3. Attorneys' Fees. The prevailing party shall be entitled to recover from the other party or parties its attorneys' fees and other costs and expenses incurred in enforcing this Project Agreement.

15. Force Majeure. Except as provided in this Section 15, the performance of or compliance with any of the covenants, conditions or obligations contained in this Project Agreement, either expressed or implied, on the part of either party shall be excused, and failure to perform or comply with such covenant, condition or obligation shall not be deemed to be a breach of this Project Agreement and shall not create any liability on the part of the affected party, during any period in which performance is prevented, in whole or part, by causes herein termed "force majeure". For purposes of this Project Agreement, the term "force majeure" shall mean events beyond the control of a party that cannot be avoided through reasonable actions by the party, including extreme weather conditions; earthquakes or cave-ins; unavailability of labor, transportation, materials, machinery, equipment, supplies, utilities, or services; serious accidents; breakdown of major equipment, machinery, or facilities; injunctions issued by any court; changes in laws, regulations or permit conditions or requirements; inability to obtain licenses, permits or other authorizations or renewals on reasonable terms in spite of reasonable efforts to do so; groundwater contamina-

tion caused by a third party that affects the water quality of the feed water; curtailment or suspension of activities to remedy or avoid violation of Environmental Laws; acts of war or conditions arising out of or attributable to war; riot; civil strife; fire; explosion; or any similar cause beyond the reasonable control of the party declaring force majeure. If either party desires to invoke the provisions of this Section 15, the invoking party shall give prompt written notice to the other party of the commencement of the circumstances giving rise to such force majeure. The time for discharging the party's obligations with respect to the prevented performance shall be extended for the period of force majeure, provided that the party invoking force majeure uses reasonable efforts to eliminate the condition of force majeure as soon as reasonably practicable. If a condition of force majeure delays JWCD's construction of the Zone B Facilities or the Lost Use Facilities, Kennecott also shall be excused from further funding under Section 9.2 or 9.3, as applicable, until the condition of force majeure is eliminated. The existence of any event of force majeure shall not relieve Kennecott of its indemnity obligations under Section 12.6.

16. Proprietary Information; Confidentiality.

16.1. Kennecott's Intellectual Property. Kennecott shall own all rights, title and interest in all intellectual property, including patentable inventions, technology and copyrights, conceived or reduced to practice solely by its personnel, consultants, agents or contractors, and, at its election and cost, may file patent applications and copyright registrations relating thereto. If JWCD desires to utilize any such intellectual property relating to the Zone A Plant, JWCD shall receive an irrevocable, nonexclusive, royalty-free license to use such intellectual property only with respect to the Jordan Valley Membrane Plant. Such license shall be subject to such reasonable confidentiality provisions as Kennecott deems appropriate. Such license shall terminate as to the Jordan Valley Membrane Plant at such time as JWCD permanently ceases operation of the Jordan Valley Membrane Plant. If Kennecott has a license for intellectual property that is being used in connection with the Project but that is owned by a third party and JWCD desires to use such intellectual property, Kennecott shall have no obligation to provide JWCD with a right in such license and JWCD shall be required to separately obtain any rights it desires from the third party

16.2. JWCD's Intellectual Property. JWCD shall own all rights, title and interest in all intellectual property conceived or reduced to practice solely by its personnel, consultants, agents or contractors and, at its election and cost, may file patent applications and copyright registrations relating thereto. If Kennecott desires to utilize any such intellectual property relating to the Jordan Valley Membrane Plant, Kennecott shall receive an irrevocable, nonexclusive, royalty-free license to use such intellectual property only with respect to the Bingham Canyon Plant. Such right shall be subject to such reasonable confidentiality provisions as JWCD deems appropriate. If JWCD has a license for intellectual property that is being used in connection with the Project but that is owned by a third party and Kennecott desires to use such intellectual property, JWCD shall have no obligation to provide Kennecott with a right in such license and Kennecott shall be required to separately obtain any rights it desires from the third party.

16.3. Jointly Developed Intellectual Property. Any intellectual property, including patentable inventions, technology and copyrights, conceived or reduced to practice by the parties collectively (including, for example, any intellectual property developed by JWCD's engineer as described in paragraph 6 of the "Agreement for Funding for a Reverse Osmosis Pilot Plant

Testing Program for a Southwest Salt Lake Valley Groundwater Extraction and Treatment System” between the parties and pertaining to the Project – the “Pilot Testing Agreement”) shall be the joint property of the parties, and if either party so elects, the parties shall file patent applications and copyright registrations relating thereto. Each party shall have the right to use such intellectual property with respect to the Bingham Canyon Plant or Jordan Valley Membrane Plant, or with respect to other operations owned by the party (but not part of the Project) if the other party consents, which consent shall not be unreasonably withheld. Such right shall be irrevocable, nonexclusive and royalty-free and subject to such confidentiality provisions as the parties deem appropriate. The licensing of such jointly owned intellectual property to a third party may only occur with the consent of both parties and upon such reasonable terms and conditions as the parties may determine.

16.4. Access to Intellectual Property. A party shall have the right to review the intellectual property of the other party only to the extent necessary to carry out the Project, and the reviewing party shall be subject to all applicable confidentiality and licensing restrictions under agreements with third parties, and reasonable confidentiality restrictions as between the parties.

17. Miscellaneous.

17.1. Entire Agreement. This Project Agreement, together with all appendices hereto, the Escrow Agreement, the Kennecott/JVWCD Settlement Agreement, the Consent Decree, the State Agreement, the Agreement for Funding for a Reverse Osmosis Pilot Testing Program for the Southwest Salt Lake Valley Groundwater Extraction and Treatment System dated January 23, 2001, the Confidentiality, Non-use and Access Agreement dated August 21, 2001, and the Agreement for Funding Construction for the Widening of 7800 South dated as of August 1, 2003 contain the entire understanding of the parties and supersede all other prior agreements and understandings (other than the Escrow Agreement, the Kennecott/JVWCD Settlement Agreement, the Consent Decree, the State Agreement, the Agreement for Funding for a Reverse Osmosis Pilot Testing Program for the Southwest Salt Lake Valley Groundwater Extraction and Treatment System dated January 23, 2001, the Confidentiality, Non-use and Access Agreement dated August 21, 2001 and the Agreement for Funding Construction for the Widening of 7800 South dated as of August 1, 2003) among the parties with regard to the subject matter hereof, including the May 18, 1999 agreement between the parties. While the Consent Decree is not superseded by this Project Agreement, the parties acknowledge that this Project Agreement is intended to satisfy aspects of the Consent Decree. This Project Agreement cannot be amended without the written agreement of both parties.

17.2. Satisfaction of Settlement Agreement and Release. When the Zone A Plant is Complete and Operational, this Project Agreement shall be deemed to satisfy any obligation of Kennecott to JVWCD under Paragraph 4 of the Kennecott/JVWCD Settlement Agreement, and Paragraph 4 of the Kennecott/JVWCD Settlement Agreement shall be superseded by this Project Agreement.

17.3. Successors and Assigns. This Project Agreement shall be binding on and inure to the benefit of the respective successors and assigns of the parties.

17.4. Conflict. In the event of a conflict between this Project Agreement and any appendix attached hereto, the terms of this Project Agreement shall be controlling.

17.5. No Third Party Beneficiaries. Nothing in this Project Agreement shall confer any rights on any person or entity other than the parties hereto, and their respective successors and assigns.

17.6. No Waiver. The failure of a party to insist on the strict performance of any provision of this Project Agreement or to exercise any right, power or remedy upon breach hereof shall not constitute a waiver of any other provision of this Project Agreement or limit a party's right thereafter to enforce any provision or exercise any remedy.

17.7. Severability. In the event any provision of the Project Agreement or any application thereof is finally determined by a court having jurisdiction over the matter to be invalid or unenforceable, the remainder of this Project Agreement shall remain in effect and any other application of such provision shall not be affected thereby; provided that the material purposes of this Project Agreement and intent of the parties may still be accomplished under the remaining provisions, and provided further that neither party is materially and adversely affected by such invalidity.

17.8. Governing Law. This Project Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah.

17.9. Transfers of Interest. Neither party may assign any right, interest or obligation in or under this Project Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

17.10. Continued Viability of the Parties. Each party agrees that it will not dispose of any assets to an extent or in any manner which would materially impair the party's continued financial viability or materially impair its ability to perform all of its remaining obligations hereunder unless (i) all of the party's remaining obligations under this Project Agreement are assumed in writing by another entity approved by the other party, which approval shall not be unreasonably withheld or (ii) the party provides the other party with a bond or other guaranty of, or surety for, the full performance of all of the party's obligations hereunder, which is accepted by the other party, which acceptance shall not be unreasonably withheld.

17.11. Notices.

a. All notices, payments and other required communications under this Project Agreement ("notices") shall be in writing and shall be addressed as follows:

In the case of JVWCD:

Jordan Valley Water Conservancy District
Attention: General Manager
P. O. Box 70
8215 South 1300 West
West Jordan, Utah 84088-0070
Fax: 801-565-4399

In the case of Kennecott:

Kennecott Utah Copper Corporation
Attention: Manager, Strategic Resources
For personal delivery:
8200 South 9600 West
Bingham Canyon, UT 84006
For mail:
8315 West 3595 South
P. O. Box 6001
Magna, Utah 84044
Fax: 801-569-7192

With copies to:

Kennecott Utah Copper Corporation
Attention: Manager, Environmental and Sustainable Development Policies
and Systems
For personal delivery:
8200 South 9600 West
Bingham Canyon, UT 84006
For mail:
South 8315 West 3595 South
P. O. Box 6001
Magna, Utah 84044
Fax: 801-569-7179

Kennecott Utah Copper Corporation
Attention: General Counsel
For personal delivery:
8200 South 9600 West
Bingham Canyon, UT 84006
For mail:
South 8315 West 3595 South
P. O. Box 6001
Magna, Utah 84044
Fax: 801-569-6807

b. All notices shall be given by personal delivery, facsimile or registered mail, return receipt requested. The notices shall be effective and shall be deemed delivered (i) in the case of personal delivery, on the date of delivery if delivered during normal business hours, and if not delivered during normal business hours, on the next business day following delivery, (ii) in the case of facsimile, on the next business day following receipt of the facsimile, and (iii) in the case of registered mail, on the next business day after actual receipt. A party may change its address by notice to the other party.

17.12. Further Assurances. Each party agrees to take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement the Project and carry out the intent and purpose of this Project Agreement.

17.13. Recording Memorandum. At the request of either party, a memorandum of this Project Agreement shall be executed and recorded in the Salt Lake County records.

17.14. Survival. The following sections shall survive the termination of this Project Agreement to the full extent necessary for their enforcement and the protection of the party in whose favor they run: Section 11, Section 12.6 and Section 13.6.

KENNECOTT UTAH COPPER CORPORATION

By: _____
Its: _____

JORDAN VALLEY WATER
CONSERVANCY DISTRICT

By: _____
Its: _____

Appendix 1

Schedule of Water Rights for Zone B and Lost Use

Project Component	Water Right Number	Flow Rate (cfs)	Minimum Annual Withdrawal (AF)
Zone B	59-1210 (a24623)	3.55	850.00
Zone B	59-1536 (a24622)	5.0	3613.50
Lost Use	59-5513 (a23590)	11.76	5000.00

Appendix 2

Proposal

Appendix 3

Water Taste and Odor Testing Methodology

1. An advisory technical water quality committee (Water Quality Committee), consisting of technical staff members, will be selected. Two representatives will be chosen by Kennecott and two representatives chosen by JWCD. The committee members should be qualified in areas of water treatment processes and water chemistry.
2. In the event that Zone A Plant permeate water is generating taste or odor complaints from consumers, the Water Quality Committee may be convened at the request of Kennecott or JWCD.
3. The Water Quality Committee shall employ analyses such as Threshold Odor Number tests, Flavor Profile Analysis, or other methods to determine the severity of the taste or odor and its likely source.
4. The Water Quality Committee shall attempt to analyze the origin of the taste or odor and reach consensus on the cause. The Water Quality Committee shall proceed with analyzing treatment solutions and make recommendations to Kennecott or JWCD as to how to remedy the taste or odor problem through the use of existing facilities and on-site technology. The responsible party shall implement the recommendations, which shall be paid for in accordance with Section 9.1.c. This process shall continue until the problem is remedied.
5. If existing facilities and on-site technology are insufficient to resolve the taste or odor problem, the Water Quality Committee may recommend treatment process capital improvements to resolve the problem.

Appendix 4

Water Rate Determination Methodology

The availability, allocations, terms and price methodologies for Treated Water or other water to be provided by JVVCD to Affected Municipalities are as set forth on the following tables:

**APPENDIX 4
TABLE 1**

Zone	Maximum Annual Volume of Water to be Made Available by JVWCD (Acre-Feet)	Maximum Flow Rate (mgd)^(c)	Term of Water Availability	JVWCD Water Rate Methodology	Allocation Among Affected Municipalities^(a)	Period of Reserved Allocations for Affected Municipalities^(a)
A	Actual Treated Water produced by Zone A Plant, up to 3850 acre-feet.	3.46	40 years following “Complete and Operational” status date.	Discounted wholesale rate, per formula in Table 4 of Appendix 4	Per Table 2 of Appendix 4	Through January 15, 2009 ^(b) . Thereafter, any Affected Municipality can contract for any remaining amount.
B	3500	At least 3.46	40 years following “Complete and Operational” status date.	JVWCD wholesale rates calculated by its then current methodology. The methodology for rates in 2002 is generally described in Table 3 of Appendix 4.	None - any Affected Municipality can contract for any amount, beginning January 15, 2004 ^(b) .	Reserved for the Affected Municipalities for 40 years following Complete and Operational status date.
Lost Use	Actual Treated Water produced by Lost Use Facilities, with a minimum of 1235 acre-feet and a maximum of 2300 acre-feet.	At least 1.10	40 years following “Complete and Operational” status date.	JVWCD wholesale rates calculated by its then current methodology. The methodology for rates in 2002 is generally described in Table 3 of Appendix 4.	None - any Affected Municipality can contract for any amount, beginning January 15, 2004 ^(b) .	Reserved for the Affected Municipalities for 40 years following Complete and Operational status date.

Notes:

^(a) The Affected Municipalities are: West Jordan City, South Jordan City, Riverton City and the City of Herriman.

^(b) This assumes that JVWCD will give written notice to the Affected Municipalities on January 15, 2004, that the quantity of water shown in Table 1 will become available by December 2006. Any Affected Municipality may thereafter contract with JVWCD for delivery of that water, within the allocations shown in Table 1.

^(c) Million gallons per day.

**APPENDIX 4
TABLE 2**

Allocation of Zone A Treated Water Among Affected Municipalities^(a)

Affected Municipality	Allocation (%)	Maximum Annual Volume^(b) (acre-feet)	Maximum Flow Rate^(c) (MGD)^(d)
West Jordan City	35	1225	1.21
South Jordan City	30	1050	1.04
Riverton City	20	700	0.69
Herriman City	15	525	0.52

Notes:

- ^(a) These allocations will be held for the Affected Municipalities through January 15, 2009 (see Table 1). Thereafter, throughout the Operational Period, any Affected Municipality will be able to contract for any Zone A water amount not previously contracted for within the allocations.
- ^(b) Each Affected Municipality may purchase up to its allocated percent of the actual Treated Water Annual Volume produced by the Zone A Plant, which may not exceed the volumes of water shown in this column. These quantities are based on 3500 acre feet Zone A water on a rolling five-year average. This Project Agreement allows Kennecott to produce up to 10% above or below 3500 acre feet in any given year. Therefore, these quantities may be greater by as much as 10% in any given year.
- ^(c) Each Affected Municipality may purchase up to its allocated percent of the actual Treated Water flow rates produced by the Zone A Plant, which may not exceed the flow rates of water shown in this column.
- ^(d) Million gallons per day.

APPENDIX 4
TABLE 3

Jordan Valley Water Conservancy District
Wholesale Rate Methodology

JVWCD annually establishes its wholesale water rates by using a rate methodology. JVWCD may choose periodically to change methodologies and/or to change its interpretation and implementation of any methodology it selects.

The methodology for calculating rates in 2002 is the “Base-Extra Capacity method” of the American Water Works Association, as interpreted and implemented by JVWCD as follows:

The costs of providing the average daily and total annual service, together with the costs associated with meeting the peak daily and peak hourly demands, are allocated proportionately to each water purchaser. In addition, those costs directly attributable to providing specialized, rather than system-wide, service to a specific purchaser, such as the cost incurred in delivering water to various pumping or pressure zones, shall be borne directly by the purchaser who causes those costs to be incurred. If two or more purchasers are within a single pressure zone, then the cost of delivering water to the pressure zone shall be proportionately allocated between them. System amortization and other fixed costs including, but not limited to, meter reading, administration, and overhead are allocated among all purchasers on a proportionate basis.

In addition, a customer-related charge to pay the fixed overhead costs of JVWCD, including meter reading and customer billing, and some related overhead costs which are incurred regardless of the amount of water used by any purchaser, is charged proportionately to a purchaser. This flat fee, based on each purchaser’s water meter capacity in relation to the total water meter capacity of the JVWCD system, is computed in meter equivalent units of 1,000 gallons per minute of meter capacity of each purchaser’s distribution system.

APPENDIX 4
TABLE 4

**Illustration of Discounted Wholesale
Water Rate Methodology for Zone A Treated Water⁽²⁰⁰²⁾**

Water Rate Components	Unit Cost for 2002 (per AF) ^(a)
• JVWCD wholesale rate (without pumping or peaking surcharges) ^(b)	\$289.11
• Less JVWCD average water source unit cost	(\$128.65)
• Less JVWCD weighted average surface water treatment/wells O&M unit cost ^(c)	(\$31.53)
• Plus JVWCD “avoided operating cost” ^(d)	\$58.31
• Plus JVWCD additional O M&R cost to reduce TDS to 250 mg/L (Zones A and B average) ^(e)	\$31.08
• Plus JVWCD’s amortized capital contribution to the proposal ^(f)	\$83.92
Net Discounted Water Rate:	\$302.24
<p>Notes:</p> <p>^(a) The illustration uses actual figures from 2002.</p> <p>^(b) The wholesale rate is determined annually by JVWCD using its then current rate methodology. The methodology for calculating rates in 2002 is the “Base-Extra Capacity Method” of the American Water Works Association, as interpreted and implemented by JVWCD .</p> <p>^(c) Includes personnel, electricity, chemical, and equipment, calculated from the previous year.</p> <p>^(d) As described in the Consent Decree, this is \$49 per acre-foot, in 1995 dollars, escalated at the ENR “20 cities” cost index.</p> <p>^(e) See CDM Report and Proposal.</p> <p>^(f) \$8,952,000 (estimated) amortized at 6%, 20 years, and divided by 9300 AF. Thereafter, this will become a replacement sinking fund contribution, at the amortized base, indexed to future years.</p> <p>^(g) Comparisons are highest elevation wholesale rates for South Jordan City and West Jordan City (Pressure Zone C) during July 1, 2002 through June 30, 2003:</p> <ul style="list-style-type: none"> • South Jordan zone 3 - \$324.79 per AF • West Jordan zone 4 - \$329.45 per AF <p>Estimated Pressure Zone D wholesale rate in 2002 would be \$355 per AF.</p>	

APPENDIX 4
TABLE 5

**Conditions to Sale of Zone A Treated Water by JWWCD
to Selected Affected Municipalities**

Affected Municipality	Condition of Selling Zone A Treated Water
West Jordan City	West Jordan City will not develop its water right #59-1572 at any point(s) of diversion closer than 2000 feet from the Affected Area, during the Operational Period.
Riverton City	Riverton City will apply to the State Engineer to move “point of diversion #1” of its water right #59-1533 to the current location of its “Garamandi Well” at 4000 West 12600 South. Thereafter, Riverton City will not move any point of diversion under its water right #59-1533 to a location closer than 2000 feet from the Affected Area during the Operational Period.

Appendix 5

Zone B Concentrate Specifications

The RO concentrate delivered to the Tailings Impoundment, the Tailing Slurry Pipelines and/or any other facility of Kennecott's (including any new alternative disposal system) from the Zone B facilities:

1. Shall not contain sulfate in concentrations exceeding 5,000 mg/L.
2. Shall not contain or constitute a hazardous waste as regulated under the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §6901 et seq., or the Utah Solid and Hazardous Waste Act, (USHWA) UCA §19-6-101 et seq., and as that term is defined by 40 C.F.R. §261.3, as such laws may be amended.
3. Shall not exhibit a characteristic of a hazardous waste as provided in 40 C.F.R. §§261.21 (ignitability), 261.22 (corrosivity), or 261.23 (reactivity), or 262.24 (toxicity), as such regulations may be amended.
4. Shall not contain any constituents above discharge limits set forth in KUCC's UPDES Permit (UTD0000051) for Outfall 012, as such limits may be amended in accordance with the applicable law. Current discharge limits are shown below:

KUCC UPDES Permit (UTD0000051), May 2000

Discharge Limits for Outfall 012

Analyte	Concentration Limit	Units
Arsenic	0.250	mg/L
Cadmium	0.050	mg/L
Copper	0.150	mg/L
Lead	0.300	mg/L
Selenium	0.027	mg/L
Zinc	0.224	mg/L
TSS	20.0	mg/L
pH	6.5 – 9.0	s.u

Notes: a) All limits are total numbers, not dissolved.

5. Shall not contain nutrients (e.g. Nitrate, Ortho-phosphate, etc.) at levels that exceed the following limits:
 - a. Nitrate plus Nitrogen 15 mg/L, Ortho-phosphate 0.25 mg/L
 - b. However, even if the nutrients in the Zone B concentrate do not exceed the foregoing limits in 5(a), if nutrients are determined to be the cause or partial cause of elevated TSS concentrations in KUCC discharge (i.e. algal blooms), KUCC and JWWCD will meet to determine mitigation and/or alternative disposal strategies.
6. Shall not contain organic hazardous constituents listed in 40 C.F.R. part 261, Appendix VIII, as amended.
7. Shall not contain detectable herbicides or pesticides or mixtures thereof in concentrations greater than KUCC discharge permit limits or one half primary drinking water standards, whichever is greater.
8. Shall not contain petroleum, including crude oil and fractions thereof.
9. Shall not contain natural gas, synthetic gas and any mixtures thereof in concentrations greater than KUCC discharge permit limits or one half primary drinking water standards, whichever is greater.
10. Shall not contain asbestos and/or asbestos-containing materials in concentrations greater than KUCC discharge permit limits or one half primary drinking water standards, whichever is greater.
11. Shall not contain PCBs, or PCB-containing materials or fluids in concentrations greater than KUCC discharge permit limits or one half primary drinking water standards, whichever is greater.

Any reference to any statutory or regulatory provision in the above items includes such laws and regulations as such may be amended from time to time. Any constituent not currently regulated, that may become regulated in the future, will be required to meet future permitted discharge limits and/or other future regulations.

Any constituent not meeting the requirements listed above shall not be delivered to Kennecott unless Kennecott and JWWCD have met and agreed in writing to mitigation and/or alternative disposal strategies.

Appendix 6

Insurance Schedule

1. During the construction of the Zone B Facilities and until the full reduction and release of the Zone B ILC, JVWCD, at its expense, shall maintain with an insurer or insurers that has or have a financial rating of at least A-VII as defined by A.M. Best Company, insurance on the Zone B Facilities (excluding pipelines and wells) as follows:
 - a. Builders risk or construction all-risk coverage during the period of construction of the Zone B Facilities (excluding pipelines and wells) in an amount equal to the project value thereof, which coverage shall be specific to the Zone B Facilities and Lost Use Facilities and shall not cover other facilities or assets of JVWCD; and
 - b. All-risk full replacement cost property insurance for the Zone B Facilities (excluding pipelines and wells) for the period following construction prior to the full reduction and release of the Zone B ILC, which coverage may be provided in whole or part by including the Zone B Facilities in a policy covering other assets of JVWCD.
2. Notwithstanding the foregoing, the parties acknowledge that (i) as of the date of this Project Agreement, JVWCD does not carry business interruption insurance or earthquake, flood or property damage insurance on any pipelines or wells, and (ii) any financial reserves or insurance maintained by JVWCD (other than the builder's risk policy described in subparagraph 1.a above) is applicable to all operations of JVWCD in JVWCD's discretion (and not just assets subject to this Project Agreement).
3. The insurance maintained by JVWCD pursuant to Paragraph 1 above shall provide:
 - a. That Kennecott is an additional insured as to the Zone B Facilities;
 - b. That such insurance is primary to similar insurance, if any, that may be carried by Kennecott or its affiliates;
 - c. Effective waivers by the insurer of all rights of subrogation against Kennecott, its agents, subsidiaries and parent companies, and its and their employees, officers, and directors;
 - d. That each party identified as an insured shall be construed as a separate and distinct insured party and the words "the Insured" (or similar term)

shall be construed as applying to each party as if a separate policy has been issued to each of them, so that a breach of the policy conditions or failure to disclose material information by any party identified as an insured shall not affect the rights or coverage under the policy of any other party identified as an insured;

- e. That no cancellation, reduction in amount or material change in coverage shall be effective until at least thirty (30) days after receipt by Kennecott of written notice thereof; and
 - f. That the insurer shall be required to interplead proceeds payable under the policy if the insurer has been notified (prior to payment of such proceeds) by any party identified as an insured that an action for breach has been initiated against the other party and such breach relates to the loss event.
- 4. Upon execution of the Project Agreement, and any time thereafter upon request, JVWCD shall deliver to Kennecott an additional insured endorsement and a certificate of insurance in a form reasonably satisfactory to Kennecott, evidencing satisfaction of all requirements set forth in this Appendix 6 and Section 12.3 of the Project Agreement relating to the Zone B Facilities, and such other information as Kennecott may reasonably request.
 - 5. JVWCD shall deliver to Kennecott the applicable endorsements and certificates of insurance described in Paragraph 4 above for any new policy which is a replacement for any expiring policy at least thirty (30) days prior to the date of such expiration.
 - 6. In the event of a material loss to the Zone B Facilities prior to the full reduction and release of the Zone B ILC, JVWCD may, at its option, elect (i) to repair the damage at its own expense, in which event this Project Agreement shall remain in full force and effect as to the Zone B Facilities, or (ii) to terminate this Project Agreement as to the Zone B Facilities, in which event:
 - a. If the termination is due to an uninsured loss to the Zone B Facilities prior to the time the Zone B Adjustment Factor reaches 50%, the provisions of Section 11.2 shall apply; or
 - b. If the termination is due to an uninsured loss to the Zone B Facilities after the time the Zone B Adjustment Factor reaches 50%, the provisions of Section 11.3 shall apply; or
 - c. If the termination is due to an insured loss to the Zone B Facilities prior to the time the Zone B Adjustment Factor reaches 50%, the insurance proceeds shall be delivered to Kennecott up to the amount advanced by Kennecott under Section 9.2 through the date of termination, and the provisions of Section 11.2 shall apply; provided, however, that any insurance

proceeds paid to Kennecott shall be credited against any amounts due to Kennecott under Section 11.2.c; or

- d. If the termination is due to an insured loss to the Zone B Facilities after the time the Zone B Adjustment Factor reaches 50%, and JVWCD does not elect to increase its commitment to deliver water to the Affected Municipalities to 3500 acre feet per year and receive payments from the Trustee in accordance with Section 11.3.e, the insurance proceeds shall be delivered to Kennecott up to the amount, if any, advanced by Kennecott under Section 9.2 through the date of termination but for which Kennecott does not receive a corresponding reduction in the amount of the Zone B ILC under Section IV.F of the State Agreement, and the provisions of Section 11.3 shall apply.
 - e. If the termination is due to an insured loss to the Zone B Facilities after the time the Zone B Adjustment Factor reaches 50%, and JVWCD does elect to increase its commitment to deliver water to the Affected Municipalities to 3500 acre feet per year and receive payments from the Trustee in accordance with Section 11.3.e, the insurance proceeds shall be delivered to Kennecott up to (i) the amount, if any, advanced by Kennecott under Section 9.2 through the date of termination but for which Kennecott does not receive a corresponding reduction in the amount of the Zone B ILC under Section IV.F of the State Agreement, plus (ii) the amount received by JVWCD from the Trustee under Section VIII.C.2 of the State Agreement, less (iii) an amount equal to the balance of the Reconciliation Payment not paid to JVWCD under Section 11.3.b, and the provisions of Section 11.3 shall apply.
 - f. JVWCD shall retain all insurance proceeds in excess of the amount, if any, paid to Kennecott under subparagraphs 6.c, 6.d and 6.e of this Appendix 6.
7. JVWCD, after consultation with Kennecott, shall initiate all negotiations and/or litigation regarding coverage and liability and manage all efforts to resolve all disputes with any insurer providing (or believed to be providing) coverage under the policies required by Section 12.3.b of the Project Agreement, but shall not accept any settlement of less than the full amount of the coverage claim without the prior written consent of Kennecott, which consent shall not be unreasonably withheld. All expenses (including fees and expenses of consultants and attorneys) incurred by JVWCD hereunder shall be borne by JVWCD.